

**CLARK COUNTY PLANNING COMMISSION
MINUTES OF PUBLIC HEARING
THURSDAY, FEBRUARY 16, 2006**

Public Services Building
BOCC Hearing Room
1300 Franklin Street, 6th Floor
Vancouver, WA

6:30 p.m.

CALL TO ORDER

The public hearing of the Clark County Planning Commission was called to order by Vice Chair, Jeff Wriston. The hearing was held at the BOCC Hearing Room, 1300 Franklin Street, 6th Floor, Vancouver, Washington.

ROLL CALL

PC Present: Jeff Wriston, Vice Chair; Dick Deleissegues, Milada Allen, Lonnie Moss, George Vartanian, Ron Barca, and Jada Rupley.

PC Absent: None.

Staff Present: Patrick Lee, Special Projects Manager; Bronson Potter, Prosecuting Attorney, Brent Davis, Wetlands Biologist and Sonja Wiser, Administrative Assistant.

Other: Cindy Holley, Court Reporter.

GENERAL & NEW BUSINESS

A. Approval of Agenda for February 16, 2006

The agenda for February 16, 2006, was approved as distributed.

B. Communications from the Public

None.

WRISTON: I'd like to point out to everyone, all our followers out there, that this is a sad and happy moment for all of us, sad in the fact that we are a reconstituted Planning Commission, we had two Planning Commission members that came up for reappointment and for personal reasons and otherwise decided not to continue. One, well, both of them you can understand because both had served very long terms, but

Vaughn Lein was our Chair for many, many years and served for 23 years, I think he was Chair for maybe 23 years, and you can certainly understand that, and Carey Smith as well served for 10 years, which is a long, a long tenure. And, yeah, we had a reception right before we had the hearing here tonight, we'll miss them both, and so the roll call was kind of strange for me and I'm sure for everyone else. On a happy note we're happy to welcome Milada here to my left.

ALLEN: Thank you.

WRISTON: And Milada Allen and George Vartanian to my right here and we're excited to continue on and it's always good to get new ideas and new personalities and we look forward to continuing years of good service. So with that being said, any introduction of guests? I assume not, I think we just we introduced Milada and George.

WRISTON: Opposed. Great. I appreciate that. One thing I will say to everyone here on this agenda, we do have a pretty full agenda, we have the wetlands ordinance which is obviously a pretty packed ordinance and a very important ordinance, we also have the biannual code amendments, so I'd ask that, I don't want to put time limits on, I don't see the need in the audience, I would ask that people keep their -- try to keep their comments brief and try not to repeat comments that other people have said sort of saying I agree with so and so or something like that so that otherwise we could be in for a very long night. I do think, I may be wrong but I do think that this is going to be a fairly packed agenda.

WRISTON: We are going on to the wetland ordinance. So at this point I guess, Pat, we'll turn it over to staff and give it a go.

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION

A. AMEND CLARK COUNTY'S WETLAND PROTECTION ORDINANCE:

The Growth Management Act (GMA) requires that jurisdictions periodically review and update their critical areas ordinances. Wetlands are one of the GMA-defined critical areas. The county's wetland protection ordinance is in Clark County Code Chapter 40.450.

The county is proposing significant changes to the wetland protection ordinance to incorporate "Best Available Science" including some wetlands protection guidance developed by the Washington State Department of Ecology. This hearing will be to consider these proposed changes.

The ordinance with proposed changes is available on the county's web page at www.clark.wa.gov; in the alphabetical index click on Long Range

Planning/Projects of Interest/Critical Areas Ordinances Update. Copies of the draft are also available at Clark County Community Development, Attention: Patrick Lee, 1300 Franklin Street, 3rd Floor, Vancouver, Washington, or by contacting Patrick Lee at (360) 397-2375, ext. 4070. E-mail: patrick.lee@clark.wa.gov.

LEE: Okay. All right. Thank you and welcome to Milada and George who have had to delve into this fairly hefty package in the last few days so I have sympathy. There's a few things that I want to accomplish in terms of the staff presentation. One is just a quick review of the process. The second is something that we did to get a sense of what the effect of the ordinance may be. We did some case studies and I think that provides insight into how these may affect property and real permit applications. And the third is really to walk through the ordinance. And in walking through the ordinance I would like to particularly point out some of the recent changes that you have seen in Exhibit 5 which was submitted with your supplemental package, and also I would like to particularly call attention to areas where we have received communications from the Department of Ecology which is kind of the State overseer of wetlands and really was in charge of most of the effort to help define a term that I think is difficult for people to grasp and that is best available science.

And what brings about this proposed revision to the wetlands ordinance is that periodically pursuant to the Growth Management Act the County needs to update both its comprehensive plan and its critical area regulations, our time to do so is now. There are certain consequences potentially if we do not move forward and update the ordinances, notably potential loss of Public Works trust funds, so there is a time element that is in the back of our minds. The other legislation that has come about since we last significantly updated the wetlands ordinance was legislation saying that when you update critical areas ordinances, you have to incorporate the term "best available science" into the consideration of that. And just to sort of set the stage for perhaps some of the deliberations that you'll be having later this evening I would ask, Bronson, if you could sort of provide a little bit of background on the legal framework.

POTTER: Sure. Good evening, I'm Bronson Potter with the Clark County Prosecuting Attorney's Office, I'm here in place of Mr. Lowry who wishes he could be here but was unavailable. Pat's right, the Growth Management Act requires Counties to periodically review, evaluate and revise their critical areas ordinances and the Legislature actually established a schedule for doing that originally making a December '04 time frame for a number of counties including Clark County and then extending that by a year as evidencing substantial compliance with meeting the schedule. That's not the only way to do it, but their time is of the essence in this process, I think there's an expectation that we will have our ordinances evaluated and revised and updated soon.

On the issue of best available science, there's been two recent court decisions dealing with that term. First of all, as you probably know the term is not defined in the Growth

Management Act itself. There are certain criteria that are established by regulation for that you can apply to decide whether or not something is best available science, but there isn't a concise definition. One of the cases was a case out of Division II of the Court of Appeals which is the division that reviews cases that come from Clark County as well as other counties, but in that case, it's Clallam County versus the Western Washington Growth Management Hearings Board, development regulations exempted agricultural activities from the critical area ordinances on land that was both zoned for agricultural and for land that was not zoned as agricultural.

After going to the Hearings Board, the County amended it to apply only to land that was in the ag zone and the land that was in the open space taxation program and on appeal the Court of Appeals ruled that it was permissible to exempt land that was both in ag zone and land that was not zoned ag, but said that in tailoring an exemption a county has to show that it used best available science to reasonably ameliorate the potential harm to the environment from the exemption and that its regulations must specifically address any threatened harm that are -- that is peculiar to the activity that it's exempting. So there the Court talked about using best available science and being required to use best available science in crafting exemptions.

The more recent cases, one out of the Washington Supreme Court came out of Ferry County and in that case the Court really delved into best available science and one of the requirements probably more than any other decision that's out there. And Ferry County took issue with the Department of Fish and Wildlife's listing of priority habitat species. The County only listed 2 of the 12 listed species for its regulations and in doing that it relied on the opinion of a wildlife biologist, but in reviewing the decision the Court said that the County had not established that its reliance on this wildlife biologist met the standard of applying best available science. And basically the Court took issue because the biologist, there wasn't any showing what his familiarity was with Ferry County, what his methodology was for determining whether or not, you know, there were certain species present or not in the county and the Court noted that, well, there isn't any concise definition of best available science and there isn't any bright line test to say when it is or isn't used, but instead it's going to look to is there scientific evidence in the record that the County relied on, was there a reasoned analysis of both that evidence and the other factors of the Growth Management Act in terms of what are the goals and whether the decision meets the requirement of the Act to apply best available science.

I guess the best lesson to take away from it all is that if you're creating exemptions or if you're going outside of what is established from regulatory agencies is what is best available science or what are the species that are to be protected, you need to establish your record for doing that.

WRISTON: Okay. Thank you. Pat.

LEE: Thank you, Bronson. Okay, let me briefly review the process. Really the

process, the more active process of reviewing the wetlands ordinance began earlier this Summer when the Board of Commissioners appointed two groups to work with staff to develop the ordinance. One was a technical group that included Brent, the County's wetland biologist, and three consulting biologists that do a lot of work in the county and elsewhere in the state of Washington, Kent Snyder of JD White Company is here, Francis Naglich and Kevin Grosz were the other two. And then there was also a working group established to review the policy questions associated with the ordinance. The role of the technical group was to try based on their professional credentials, based on their awareness of the guidance that the Department of Ecology has come up with in terms of managing wetlands, was to review the current ordinance and to suggest from the technical standpoint where there may be a foundation for best available science or a choice other than best available science for the consideration of the policy group.

The policy group then reviewed the information from the technical group and actually put together what you see as the public review draft which I believe was the first, let's see, exhibit number -- oh, there's two versions here, one that shows the markup of the existing ordinance and the second because of some of the guidance the processes changed a little bit and I'll go into that. The Exhibit 4 is kind of the clean copy of what the working group had recommended and Exhibit 5 is based on a review of the working group product based on a review by our prosecuting attorney taking into consideration some of the comments of the Department of Ecology and very importantly some of the work of a group that is continuing to meet on the habitat ordinance.

And that group is addressing two very difficult issues. One is the regulation of agricultural land, existing agricultural activities potentially under the habitat ordinance, and the other was addressing the issue of utility corridors and routine maintenance. So a lot of the markup in Exhibit 5 is a result of the utility group's work on that particular issue and the overall habitat group generally supports that, those particular changes that have been reflected in Exhibit 5. To briefly hit some of the key distinctions of the proposed ordinance before maybe delving into the case studies a little bit, perhaps the biggest change and perhaps the biggest reason why we wanted to get a sense of what the implications might be more than just adopting something and not having that review of the implications is that one of the changes to adopt a new rating system for wetlands which takes a far different approach than previously had been done. It tries to hone in on what the functions and values are of wetlands and specifically in three particular categories, water quantity; i.e., the ability to retain runoff, water quality issues associated with sedimentation, filtration of things in the wetlands before discharging or being absorbed into the ground, and thirdly the issue of habitat quality of wetlands.

So those are really the three functions and values in which the new system hones in on and there is a fairly complex field rating sheet that the biologists used to actually assign point scores to these various functions and values or specific criteria associated with these functions and values and it is the total score once all those point

assignments are totaled up which dictates whether you're going to have a very high quality wetland such as a Category I or a Category II or lower quality wetlands such as a Category III or a Category IV wetland. The other major distinction is how to approach the issue of buffers which are certainly part of regulations associated with wetlands from the early days as part of our current ordinance, but there is again a different method for determining what buffer widths might be appropriate given the State guidance that has been developed. There's two functions, and when we go through the ordinance I'll point them out, but just in general, one, certainly the rating and then you compare the rating to the intensity of the land use activity that is being proposed and again, that is somewhat different than the current system.

And kind of with that orientation I would like to delve into the case studies a little bit to at least give you some indication of how this may affect how the wetlands ordinance in the overall sense may be applied in the county if the proposed ordinance is adopted in a manner similar to what it is today. And the first thing I need to do, in your supplemental staff report package you have 11-by-17s of the case studies and you also have a summary sheet and I'm going to work primarily from the summary sheet, but I noticed some errors in the summary sheet that I gave you earlier so I have a revised summary sheet.

WRISTON: And while you're doing that, Pat, I made a mistake and I just should have asked, did anyone have questions of Bronson? Okay. It didn't seem like it, I just should have asked that. Thanks, Pat.

LEE: Okay. The case studies that you see on the boards here are the same ones that are in your package although the error has been adjusted in the summary table, and as I said, I'm going to work from it. We did -- really we did about -- tried to look at four or five what we consider typical sites. We actually had our technical group go out and apply the rating system, the new rating system, to actual wetlands, and then we had through the wonderful help that Tim Schauer and Paul Weller of MacKay & Sposito actually did typical development concepts. So we had -- and they don't reflect actual permits, but they're typical development concepts juxtaposed on a real wetlands with the new rating system applied and the buffers applied. And we did a large commercial and a large residential on one of the sites, a smaller commercial and a smaller residential on a second site, and then we did a couple of rural examples to get a sense of how things may affect short plats or legal lots of record type issues. And there is one other board that we have which basically just highlights if you have a very high-quality wetland such as a Category II, and this is Case Study 7 which is not reflected on the summary table because there was not a development concept applied, but it's just a buffer analysis to give you an indication of when you have a high-quality buffer requirement what the implications may be.

So what I would like to do is briefly run through the table. If you go to the case study number -- well, let me orient you to the table first. The rows we have the case study number, then we have applying the current ordinance and then we have two scenarios

of applying the new ordinance under each case study. The one if you have a high land use activity next to the wetland, the second if you are able to design and take advantage of some of the flexibility that is available to reduce buffer size and the approach in the proposed ordinance is then you drop the land use intensity category from a high to a moderate. So that is how the system is applied. And for each of the six case studies we give you what the current wetland rating is, what the rating is applying the new system.

And this is column two, and, you know, a couple of things that I want to highlight. In the first four examples, in other words the two sites, the two urban sites that we identified, the rating system changed the category of the land use from a IV, which is a lower quality with a lower buffer standard, to a III under the new system. So clearly the new rating system can affect what the outcome is in terms of the categorization of that particular wetland. Conversely, if you go to Case Studies 5 and 6 you go from a Category III, IV situation and a Category II, IV situation down to Category IV situation or a Category III, so the classification is reduced so there is going to be some variability if the new system is adopted and applied.

The next columns required buffers, again current buffer. For example Number 1 is 50 feet, if you have a high land use intensity activity as an urban commercial site would be you then have an 80 foot, but if you can design -- you can reduce the buffer down to 60 feet if you can design in a sensitive manner. And in terms of what a minimum buffer would be in that particular situation, you would have a minimum buffer under the current ordinance of 25 feet and 40 feet in the new system. Then just to juxtapose again we go down to Case Study Number 5 where the rating system has been reduced, you go from a combination of a 50 or 25 foot required buffer down to a 25-foot buffer because they were all short plat, at least in the proposed ordinance is considered a low intensity activity and minimum buffer would be 25. So again, there is a lesser buffer requirement in that particular scenario.

The next column, buffer reduction, if you take what the required buffer is in column three, if you apply some of the provisions in the ordinance that allow you to modify buffer widths, you could get down to a in current 32.5 to 37.5 buffer width in some cases and the new high situation, again Case Study 1 just because it's right at the top of the page, new high is 80 feet, given the provisions in there to adjust buffers you could get down to 60 feet. The next two columns, wetland replacement and wetland enhancement, those are two approaches to mitigation and another major change in the proposed ordinance, and this again is consistent with what the State guidance is suggesting, is that if you are mitigating via wetland replacement where you're actually not losing wetland acreage but you're replacing any acreage that is lost from a fill for example, the current replacement ratio is for every, just again for ease of arithmetic, for every one acre disturbed you need to replace at a rate of 1.25 acres, so you have a 1.25 to 1 ratio. And wetland enhancement which is taking existing wetland, so for example you may be allowed to fill a certain wetland and if your mitigation approach is a wetland enhancement which does not create replacement wetland acreage but you

improve the quality of existing wetlands, then the mitigation ratio is for every one acre that may be filled for example, you would need to replace or mitigate at a rate of four acres of enhancement.

In terms of the next column, buildable, I think this gives you a range and this will be very dependent on the sites that we're talking about what the amount of buildable land is, but in the current ordinance for Case Study 1 you have 52 to 55 percent, 52 if you just use the standard buffer and 55 percent buildable if you take advantage of some of the flexible provisions for reducing buffer widths. And conversely, Case Study 3 for example, again this is very site-specific, you have a range of 72 to 77 percent under the current ordinance and that is reduced to 66 to 70 percent under the proposed ordinance. In terms of what a development yield may be if we go to building square feet and parking spaces for the commercial examples, the current ordinance in Exhibit 1 would enable you in the typical development concept that Tim developed to create 208,900-square feet of commercial space, if you are facing the high buffers in the new ordinance that is reduced to 200,660 feet, if you are able to take advantages of some of the flexible provisions built in, you are then able to recapture up to 204,040 feet. And the next column is just the parking spaces that are designed associated with that commercial and again there is some variation.

Then you go down to Number 3 and you have under the current ordinance 73,250-square feet of office space, if you are looking at a high buffer scenario that is reduced to 71,250-square feet, and if you are able to design to reduce the buffer requirements, you then recapture the 2,000-square feet that are lost, there is still a net loss in parking spaces of 26 I guess or 27, 27 net loss of parking spaces. If you go to the rural examples, well, we can do a lot yield on the far right column. In Case Study Number 2 under the current ordinance scenario with 154 lots was developed, under the new high buffer you're still able to get 154 lots, some of the lot depths were reduced and that is part of the reason why you're able to do that, and then by applying some of the design measures to reduce buffer widths further a sufficient lot depth in this particular design was created, was via been able to be designed to create an additional three lots, so in this case the scenario indicated, you know, a potential means of increasing.

And if you go to Number 4, the smaller residential urban type parcel, you have 50 under the current ordinance, 50 under the new high and we wanted to test one of the interesting design provisions in this particular case which allows you to reduce buffer widths further if you can maintain an open space connection across a property that connects some habitat areas. So it was a look to see if that would happen and then in the new mod, even though you're reducing the buffer width because of that provision, the lot depth just wasn't there. So even so you ended up losing a couple, but there might be other approaches where you'd get the same yield and for the rural examples 5 and 6 there was no impact on the lot yield at all.

That is really the summary of case studies and again, it was just to get a sense of what

might happen because it's a totally new wetland rating and buffer establishment process and wanted to know what the implications were and if you have any questions, specific questions, you know, both Kent or Tim are certainly here to help out and respond to any inquiries you have.

WRISTON: Okay. Thanks, Pat. Any questions on the chart?

MOSS: Yeah, I do. I'm a little confused. If we could take the Case Study 1.

LEE: Okay.

MOSS: It seems to me that one of the reasons that we have so little apparent affect here is because we have no development on the south side at all and we have a habitat area that's north of the buffers for the wetland for about two-thirds of the south boundary of the development?

LEE: Yes.

MOSS: I'm having a little trouble imagining, what is that habitat area? Is there a stream running through this wetland?

LEE: Yes.

MOSS: And if so, why isn't it more irregularly shaped I guess? Why doesn't it parallel to the south?

LEE: Oh, these are actual wetlands. I mean this is how they are.

MOSS: I think they probably are, yeah.

LEE: They are. Yes, in this particular example I believe is the Curtin Creek example where there had been some past straightening of the water course.

MOSS: In this particular case I guess what I'm wondering is the example shows that there's only a minor effect on the developability of this project and yet that appears to be because the project really doesn't border the existing wetland buffers except for a very small portion.

LEE: There's also oak habitat there which is governed by the habitat ordinance and that affects -- we were looking at what the effect of the wetland ordinance, so that also was respected in terms of laying out the design scenarios.

MOSS: I guess my question here is it seems to me that in this particular case we have an illustration which really isn't affected one way or the other by the widths of the wetland buffers in that the development is really controlled by the habitat buffers. So

I'm wondering in Case 1 here if this isn't somewhat misleading as to the effect that we might expect on other projects.

LEE: I would say that there are several situations that we think it's a fairly typical type of a wetland that you may have with some oak habitat adjacent to it so we were trying to give as best a scenario as we could and based on the real life situation of that particular, and again these are only, what, six case studies so, you know, we don't know what the overall affect is when it's going to be across, but we did select these specific areas because we thought they were fairly typical of what we might be running into.

MOSS: Well, and I'll acknowledge, Pat, that in most cases you do have habitat buffers that exceed the width of the wetland buffers or in many cases you do if you have streams or if you have other types of habitat so this may not be uncharacteristic, but I'm also having a little bit of difficulty here understanding what's being illustrated in Case 3; that is, if I'm understanding this correctly the buffers in the three illustrations here, in this case here with the moderate buffer that extends out into parking area. Is parking allowed within that buffer or what's really happening there?

DAVIS: The yellow buffer there is actually the high-intensity buffer so what it's showing is the buffer in the moderate scenario you have, we've reduced the buffer from high-intensity to moderate. So it's just showing -- the parking is shown in the yellow which is actually the high-intensity buffer, the green line is the moderate.

MOSS: Oh, okay. Okay. Thanks, Brent.

WRISTON: Other questions? Dick.

DELEISSEGUES: Well, I had a couple of questions on the text of Exhibit 5. It seems like there's some requirements in here both for protection and then for development that seem like they're at cross purposes. And a good example I guess is in the introduction it says "allow reasonable use of property," on Page 3 there's a couple of standards says "chapter will not be used to deny or reduce --

LEE: So you're talking about the text in the ordinance itself?

DELEISSEGUES: Yes.

LEE: Okay. I'm sorry.

DELEISSEGUES: On Page 3, 4.C, "standards of the chapter will not be used to deny or reduce the number of lots of a proposed rural lands division."

LEE: Yes.

DELEISSEGUES: And then below that, "public agency or public utility go ahead and do that" and I just wondered is there a provision in a piece of property where there really isn't a building site that's outside the wetlands would you expect that no development would occur there at all or that they would be allowed to fill or something to build one house or --

LEE: I believe that's the purpose of the reasonable use exceptions is that if in fact you do have a property that is mostly encumbered by wetlands, no, I don't think it would be the intent and this stipulates that that the County would deny the, you know, ability to develop a house or reduce the short lots. We might point to where we thought the most developable portion would be. We might for example in a short plat situation encourage sort of a clustering of units, et cetera. Those are some of the tools that we'd use to try and work with these situations without reducing the number of lots that could be yielded in the short plat situation.

DELEISSEGUES: And I just had a question on the wording in 4 below that where it says "does not discharge the obligation," you know, "discharge" seems to me to mean carry out, it would be remove or lessen the obligation. I mean just the terminology there is confusing and it's --

LEE: Okay. Certainly changes can be made. I think the intent was if you have a permit you, you know, you are expected to comply with the terms of the permit.

DELEISSEGUES: Right. Nitpicking. And the other nitpicking I guess is on Page 4 where under 9 in the, oh, I guess it's g where it says "clearing for operation, maintenance of existing utilities, public facilities" and so forth, would that also include a private access road? I mean it's not a public utility or public, but I don't see anything about access roads anywhere in here.

LEE: I will say that the wording of this particular exemption came from the utility group and they were addressing the public utility corridors. I believe that there are other provisions of the ordinance in terms of allowed activities in a buffer, et cetera, that address the ability to take a private access across that.

DELEISSEGUES: I just didn't see the specific wording anywhere for that but, okay. Go ahead.

WRISTON: George.

VARTANIAN: Yeah, I'm sorry. What Lonnie was addressing before on Case 3 where you've got the moderate buffer.

LEE: Let me point out that Case 3 is the one where in that summary table that the numbers have changed a little bit from what's depicted on the graphic itself. I do actually have updated 8 and a half by 11 size that I should probably distribute.

VARTANIAN: Well, okay. Does the new graphic indicate there's still parking in the yellow zone or --

LEE: Yeah. Yeah. It would, it would. Basically what the new graphic does is it checks the -- it corrects the error in the square footage and number of parking spaces and so it's with that example.

VARTANIAN: So we do allow, we will have, we can have parking in a buffer?

LEE: If you are able to design to reduce the buffer from a high-intensity category to a moderate-intensity category, lessen the buffer, that does free up additional space that the parking spaces could be constructed into.

VARTANIAN: Does that mean enhancing the buffer elsewhere?

LEE: It -- that could be, could be --

VARTANIAN: Or it couldn't be?

LEE: -- part of it.

VARTANIAN: Okay. Thank you.

WRISTON: Further questions? Ron, anything?

BARCA: Nope.

WRISTON: Pat, do you have more or do you want to --

LEE: No. No. I wanted to, you know, out of courtesy to Kent and Tim try and, you know, give them the opportunity to pitch in and respond to questions if they wish to do so.

WRISTON: Okay. Kent or Tim?

SCHAUER: Not unless you have questions.

WRISTON: Stick around because they're probably coming.

VARTANIAN: It's early.

WRISTON: Yeah, it's early, that's right. All right. Thanks.

RUPLEY: I have a quick question.

WRISTON: Okay. Jada.

RUPLEY: Pat, I have a quick question for you. As I read through your staff report there were several instances that you talked about the fact that the working group did not agree, did not reach consensus, unable to, talk to me about this process and why there were so many of these situations.

LEE: Well, actually there were very few of them, there was only three. In terms of our working group that, and they clearly -- and I guess Steve and Tim and John were all participants in that group, and if I'm telling things wrong, you know, speak up, but they clearly set up these three areas as policy calls and when we had the Board work session last week, we asked the Board their feelings about these particular three issues and the Board did give us the direction and that direction is what was included in Exhibit 5.

RUPLEY: 5?

LEE: Yeah.

WRISTON: Thanks. Thanks, Pat. All right. Any other questions? All right. We'll open it up to public testimony. Gretchen, you're the lottery winner tonight, you're the first one on the list.

PUBLIC TESTIMONY

STARKE: Yeah, I came up here early to sign in.

WRISTON: That was, that was good.

STARKE: I have ten copies and you hand them out.

WRISTON: Absolutely. As much as we know you, the drill we still need your name and address.

STARKE: Right.

WRISTON: I know. I know you know.

STARKE: I won't read the whole thing, I'll read just part of it. My name is -- for the purposes of the record my name is Gretchen Starke and I live at 308 NE 124th Avenue in Vancouver. I am the conservation chair of the Vancouver Audubon Society and I am speaking on behalf of Audubon. Audubon is interested in preserving habitat for birds and other wildlife, but we are also interested in preserving habitat for people.

Protection of wetlands does both. In Clark County preserving wetlands serves at least three basic functions. Wetlands prevent flooding. It rains a lot here if you -- by the end of this January it would have been possible to see where development should not have occurred. Allowing someone to build in a wetland only to have that person wind up with a swimming pool in his living room during an unusually wet spell does him no favor. Wetlands absorb the rain allowing the water to soak into the ground, into the groundwater rather than flooding the land and buildings. Wetlands protect our drinking water. In Clark County the Troutdale aquifer is the source of nearly all of our drinking water. Wetlands can and do filter pollutants from the water before it soaks into the ground and the vegetation that grows in them takes up many of the dangerous contaminants. Wetlands provide habitat for many of the birds and other animals that people enjoy having around. Even the small seasonal wetland can provide a roosting and feeding place for the wild ducks that winter here. Many birds ranging in size from the small Marsh Wren to the Great Blue Heron live in or near wetlands. Okay, enough of the poetry.

The proposed wetland ordinance is an improvement on the present ordinance and Vancouver Audubon urges the Planning Commission to recommend adoption with a few modifications that I will detail below, I won't read them all. A feature of this new ordinance I particularly like is a classification of uses as to impact, high, medium and low, that makes sense and should make it easier to administer as well as letting the landowner have more flexibility. I do have an issue or two of concern and we are particularly urging that the Planning Commission recommend to the County Commissioners that all of the changes suggested by the Department of Ecology be incorporated into the ordinance.

And to go on to my two main concerns which is 40.450.010.B.3.c on Page 3, and I believe one of you mentioned this earlier of Page 3, starting at Line 5, the provision that the number of lots in a rural subdivision not ever be reduced is one of our concerns. And what if the only way to preserve functions and wetlands and value of the wetlands was to reduce the number of lots allowed in a given parcel, creating ever more small rural lots, the two and a half and five-acres lots, in an area that has a lot of wetlands will create more problems for the future. And the buyer of the new lot will naturally enough want to build his house, maybe a barn, a corral, and possibly pasture animals, certainly economic use of the land by the developer must be allowed, but if say he has a 25-acre parcel he wants to divide into five acres but to do so would adversely impact wetlands, I meant parcels rather than acres there, darn, dog gonnit.

WRISTON: That's all right.

STARKE: But supposing he wants to develop five-acre lots, five parcels, but to do so would adversely impact the wetlands, while it would be possible to divide it into four parcels of quick, my arithmetic, whatever acres apiece, he could avoid the impact and the County would require -- if this is the case the County should require the fewer lots. The developer could still sell his lots and make money, but the -- so this provision in

the ordinance reduces the flexibility for the County and really ties the County's hand and I don't know why you'd want to do that.

The other main issue of concern is on Page 11 below the chart Number 3, and I notice that DOE had a concern about that one too, that is .03.030.E.3, the DOE suggests that the non-buildable lot in a subdivision within the wetlands left should definitely be in common ownership with some kind of legal instrument to provide for the wetlands preservation. Because if the unbuildable lot is separated, is purchased by somebody else, he'd want to build on it and there you are with the necessity of allowing him to have some economic use of it. So the -- this will inevitably lead to the degradation or even the destruction of the wetland and I think DOE has a point and I picked up on that even before I read the DOE comments.

Then I just want to say a few words about mitigation. Historically mitigation has had a high failure rate. To minimize failure there must be certain standards. We approve of the provision of financial assurance that is in this ordinance so as things go wrong and the County can make good and maybe fix things. The ordinance could be stronger, however, in the requirements of off-site mitigation. To preserve the function and values of a destroyed wetland the replacement wetland whether it is in a wetland bank or not must be in the same watershed as the destroyed wetland. In fact the replacement wetland should be as close as possible to the lost wetland. Wetlands protect against flooding. A replacement wetland that is over the ridge in another watershed will do nothing to protect the houses near the lost wetland from being flooded during heavy rainfall.

Then in the performance standards and the final mitigation plan there is a list of criteria. In addition to species abundance and diversity, the presence of certain species, especially those species of special concern, should be listed in the baseline data and quite possibly the WDFW habitat species and habitat and species category could be used for that. The replacement wetland might not be able to provide all that is needed for the species that were -- for all the species that were present in the lost wetland and the result could be the loss of that particular species from the area or even the county. Then the DOE suggests monitoring for ten years for forested wetlands and higher risk mitigation actions. I would actually suggest that there be ten years of monitoring should be the norm unless the applicant can demonstrate after a shorter period of time that the mitigation will be successful.

And as an example, a degraded upland site I know of was replanted nearly ten years ago and it still is not back to where it was before the degradation action and wetlands can be even more sensitive.

As I said at the beginning, this ordinance is an improvement on the present situation, but I will refer you to the last paragraph of DOE's comments. According to DOE this ordinance deviates from best available science in many of its standards. The County will have to ensure that there will be no more loss of the functions and values of wetlands. And in the 38 years I have lived here there have been too many wetlands

destroyed. Thank you for the opportunity to comment.

WRISTON: Thank you, Gretchen. Any questions?

VARTANIAN: I have a question.

WRISTON: George.

VARTANIAN: Yeah, Gretchen, in the last paragraph that you just read you indicated that there was a wetland that had been mitigated, I'm sorry.

STARKE: It wasn't a wetland, it was an upland site, yes.

VARTANIAN: Okay, I'm sorry. It was an upland site that had been replanted ten years ago and it's still not back to the way it was?

STARKE: Yeah, that's right. It was almost, it was --

VARTANIAN: Has anybody done any studies as to why that is? Is the land permanently disfigured or --

STARKE: Well, it was -- for one thing it's hard. It was neglected is what it was.

VARTANIAN: I mean it was poor maintenance to get it back to speed or is there something else?

STARKE: Yeah, it was, it was just plain neglected. It was, it was near my house.

VARTANIAN: Is there something in Code to enforce that so that it's not --

STARKE: Well, right now it's in the city. And yes, there --

WRISTON: There you go.

VARTANIAN: Well, there you go. Just joking.

STARKE: Actually, yes, there is, it's a City park now and people are working on it, the neighborhood association is working on it and so on.

VARTANIAN: Okay. Thank you.

WRISTON: Okay. Thanks. Any other questions? Thanks, Gretchen. Richard Benclen. Did I pronounce that right?

BENDER: No, Bender I think.

WRISTON: Bender. Thank you.

BENDER: Sorry about my writing.

WRISTON: No, that's all right.

RUPLEY: I'll help him.

WRISTON: I should have Jada, Jada help me, that's a d, I thought it was a c and a l.

RUPLEY: I'll help him with the big words.

BENDER: Sorry.

WRISTON: It's the joy of getting to read these names here.

BENDER: My name is Richard Bender. I do business out of 6700 NE 162nd Avenue out by Fourth Plain. I've earned my living in water chemistry for the last 25 years applying my trade both in Oregon, Washington and Idaho. My industry charges large amounts of money to do what wetlands do naturally. The term best applied science is a Catch-22 term. Let me explain myself.

Back in the late '80's here in Clark County some of the worst levels of dioxin were discovered in aquatic life in the Columbia River, a direct result of a local manufacturer. This set off a large concern throughout the United States for dioxin and AOX's, carcinogenics, et cetera. At the time this particular manufacturer was applying the best science available under the guidelines they were given. Was it the best of possible scientific information available, I don't think so, but it was in compliance.

The EPA stepped in and raised the bar several notches, cluster rules, BOD rules, which is Biological Oxygen Demand rules, Chemical Oxygen Demand rules, et cetera. The industries throughout the United States said we can't meet those standards, it will put people out of work and it will basically bankrupt the industry, well, it didn't and this industry today is one of the leaders. In fact some of the water being put back into large bodies of water like the Columbia is actually cleaner than the water it's going into. This committee here has the responsibility to set the bar high. The developers will meet that. Everybody wants to take the path of least resistance, that's a natural, that's a given, but in the case of standards your responsibility is to set that bar and the best applicable science will either come to the aid of it or will be found. Thank you.

WRISTON: Richard, hold on. Any questions? Thank you. All right. This one I do know, Dick Dyrland.

AUDIENCE: Dick had to leave for a Board meeting he just said. He'd just like the

Department of Ecology's recommendations to be forwarded.

WRISTON: All right. Thank you. Steve Douglass.

DOUGLASS: Good evening. My name is Steve Douglass. I live at 18008 NE 81st Circle in Vancouver. First of all I'd like to thank the Commissioners or I guess Commissioners, whatever the appropriate term is --

WRISTON: That works.

RUPLEY: We're called all sorts of things.

DOUGLASS: -- for your service that you provide on in reviewing the wetlands ordinance and I appreciate what you're trying to do. I moved to Clark County four and a half years ago and one of the reasons I moved here was because of the quality of life issues and being able to live in an area that was somewhat rural but yet had all the services and the kind of things that you would want to enjoy. Things haven't gone exactly the way I had expected them to because there's -- I live near the Fifth Plain Creek area and there's a lot of proposed development in that area. And one of our concerns, myself along with the other neighbors, is, you know, how that will affect us and other future neighbors. We don't intend to try and stop all the development in there, but I'm concerned what will happen.

Right now at the west end of the street that I live on it borders or comes near the Fifth Plain Creek and every Winter some of those lots flood, not deeply but there's a lot of standing water on there for a period of time, and just south of us there's a very large area, an open field, and it's a treed area, and it's proposed that they would build some very dense housing in that area and I'm concerned without proper ordinances to protect those wetlands and the creek that runs through there that we would experience a lot more flooding. I'm also concerned about, you know, what happened if we lose that kind of habitat that we enjoy seeing in our area. And the third issue of course has been mentioned several times is water quality. You know, we get our water from a well and right now we have very good water, but I know that without proper protection those things can change and I saw that happen to a city in California where they didn't enforce the protections that they had and it ended up the City had to import all their drinking water for a large period of time and it became very, very expensive for those residents. I don't know how they finally resolved that, but I'm sure it was a great problem for them.

So I guess to sum it up, I wanted to be brief, I just wanted to encourage you to do what you can to keep strong ordinances in effect to protect the habitat, the wetlands and the flooding issues. Thank you.

WRISTON: Okay. Any questions for Steve? Thank you, Steve. Wendy Garrett. Go ahead, I'm sorry. Go ahead.

GARRETT: Hello. My name is Wendy Garrett. Sorry for my nervousness. My address is 19207 NE 73rd Street and I live in Vancouver and I live near the Fifth Plain Creek area proposed development. I'd like to thank you for your time and your hard work on this study and all this. And I have lived in Clark County over 20 years, I've seen some changes and some good changes, seen a lot of changes here and some of the changes have been good and some of them have been bad I've seen. And I live in the proposed Fifth Plain Creek area. My concern in this area is the protection of the wetlands and creeks in this area. We have five creeks, we have a lot of wooded areas and wildlife in this area. There is the -- there is a term that I've heard being used that's called best available science. I'd like to refer to what I would like to call a common sense science.

In this area that I live they plan on putting over 2,000 houses which would be very destructive in the area that we live. Once the houses are built they're put so close that nearly the eaves, eaves of each house touch. There's large timber areas in this, in this area of development. Once those trees are cut down and the houses are put in there's nothing but hard surfaces, where will all this water go. So where does -- my concern is flooding, erosion in all this area, and developers have no concern of this area, they just build the houses and with all the homes that they can put as close together as they can and they're just there to make the money and then they're gone. This is important that your Planning Commission is to protect the wetlands from irresponsible development.

And my next concern was when I was looking at your, like your case study maps here, on the case, I'm trying to find where it is here, I'm sorry, on the case study like Number 6, rural existing lot, it gives a wetlands rating and then under that it talks about buffers. On the current one there's 125 feet and then on the proposed one there's 40 feet, that doesn't seem like much difference, much distance from a wetland, that's quite a change from 125 to 40 feet.

LEE: I think, if I can respond, that is a direct function of the fact that the wetland rating was decreased based on the new rating system from a class, oh, combination II/IV to a III, so it was down, and the cross-hatching indicates the additional buildable envelope if you will that was created because of that relationship between land use intensity and the rating and how it turns out.

DELEISSEGUES: Well, let me ask a question: Is it because it's less wet, you know?

DAVIS: No, actually. The situation with this specific site is that the existing wetland is a combination of vegetation and plant communities, there's a forested patch, there's some shrub patches and then there's most of it's open pasture. The open pasture portion of the wetland is Category IV, the forest portion because it's greater than an acre there's a specific criteria in the current ordinance that says all forested wetlands greater than an acre in the rural area are Category II. It has nothing to do with how that wetland functions in the landscape. And the new rating system looks at the entire

wetland as a whole and how it functions as a whole and the entire wetland rated under the new rating system is a Category III and the buffers for that are based on what is needed to provide water quality function because the entire wetland did not score high enough for habitat function to get additional buffers to protect habitat.

DELEISSEGUES: I'm sorry, Wendy, I didn't mean to interrupt you, go ahead.

GARRETT: No, I'm glad you asked. And what determines if there's enough wildlife habitat? I mean what determines that? How do you know how many birds live in there, (inaudible) fish (inaudible) --

DAVIS: The Washington Department of Ecology developed a rating form, it's a score sheet, based on specific characteristics of the wetland that you observe in the field, things like what kind of corridors does it have to other habitat areas that are undisturbed. Primarily they need to be at least 30 percent tree cover and be like 100-feet wide in order to count. It looks at what types of State listed habitats are in the immediate area, priority species, priority habitats, it looks at physical structure like woody debris, that sort of thing. And it's very complicated and you go through the sheet and you get a score at the end and then the Department of Ecology determine that for the habitat portion of the rating if it scores less than 20 points, then it is low habitat function, if it scores more than 20, if it scores 20 points or higher, it's either moderate or high habitat function and we propose a range of buffers depending on how high that score is.

GARRETT: Again I want to thank you for your time and your work and thank you for letting me speak.

WRISTON: Thank you, Wendy. Any questions? Thank you very much.

VARTANIAN: Could I -- sorry again.

WRISTON: No, go ahead, George. No, that's all right, George.

VARTANIAN: As we grow old together you'll find I have a lot of questions because I'm trying to learn.

WRISTON: That's all right.

VARTANIAN: And not so much a question for Wendy but specifically on the wetlands evaluations and scoring it I understand what you're saying about the number of trees and the canopy and all, but I mean does that include how it handles water as well, like the permeability of the soil and how much -- how long it takes for an X number of inches of rainfall to get absorbed and all?

DAVIS: There are two other categories, I was specifically talking about the habitat

function portion of the rating. There is a hydrologic function which is the water quantity and then a water quality component. The water quantity component looks at primarily the wetlands' ability to store water and whether or not it's in a watershed that has flooding problems, but it doesn't get into the details of the actual soil characteristics, it's presumed that most wetlands, most hydric soils, do not drain very well, that's why they're wetlands.

VARTANIAN: By definition, yeah. Okay. Thank you.

WRISTON: All right. Other questions? Jeanette Steinhauer.

STEINHAUER: Hi. I'm Jeanette Steinhauer. I live at 7304 NE 182nd Avenue in Vancouver. I'm born and raised in Clark County. I grew up in Washougal when I think the population sign said 5200 people so we've seen a lot of changes throughout the years. I'm here tonight because I want to thank you all for the opportunity to talk and to commend you for your hard work in all of these issues. I'm asking that the Planning Commission adopt a stronger wetlands ordinance than what's being proposed here this evening. Specifically I would like to see you not exempt small wetlands and existing farm, currently farmed wetlands, because in doing so it makes it much easier for those working farms to be converted into irresponsible development such as what's being proposed in our neighborhood. If the Fifth Plain Creek development is allowed to go through and they're allowed to put the 2600 homes, we have 12 acres, most of it's pastureland, there's a forest, and then we have a large a creek running through, we're very concerned about water quality, we're on a well, and the flooding that would be caused from that proposed development. Thank you.

WRISTON: Thank you, Jeanette. Any questions?

RUPLEY: Did you say you own 12 acres?

STEINHAUER: Yes.

WRISTON: Thank you. Any other questions? Louie Steinhauer. I see you're related, don't just repeat what she said.

STEINHAUER: She's my sister. Okay. Yeah. I'm Louie Steinhauer. I live at 7304 NE 182nd Avenue. And with not repeating what my wife had just said, what got me started in this is we're being brought into that urban growth boundary and at first when it came in, you know, I just, you know, I was thinking of the development, you know, and the neighborhood just going down the drain, but the more I get into it the more I see how it affects other areas, which is the wetlands area.

So you guys have a tough job ahead of you. I, what I'm hearing tonight is you're talking about reducing the buffer zones and that concerns me because if they do, you know, develop our area there's going to be a lot of houses that go right next to Fifth

Plain Creek which runs through my property and I'm wondering about the flooding because I've lived there -- well, my parents owned the land for, you know, over 50 years and I've lived there off and on 46 years and I live there now and it has not flooded yet, but if they put in houses like they are in the proposed area I could see it possibly affecting that substantially, you know, and then not to mention the wildlife.

And then farther south of us there's a guy that owns a lot of land that gets flooded because of two creeks, Fifth Plain Creek and Lacamas Creek both meet on his property, and he went from 50 acres to 100 acres of flooded land, so if that, you know, it all trickles down through, you know, from where that development is going through. And then not only in our area I've seen development in the past up by the Summers Hill affect water that goes through like 212 and stuff, so, you know, I'd ask you guys to really study this and try to preserve the wetlands to -- for any future damage to the smaller areas. I know they've done a lot of studies and stuff, I don't know who's done them or where, but I haven't seen anybody out in our area, you know, and just, I'm just going off from living there what I've seen over the past 46 years. So I'd just ask that you guys really study your -- get all your facts and study it.

WRISTON: Okay. Thanks. Questions?

DELEISSEGUES: I just had a question for clarification on the urban growth boundaries in Washougal city?

STEINHAUER: No, it's in East Clark County it's on.

DELEISSEGUES: But the urban growth boundary for which city?

STEINHAUER: We're in -- it's east of 162nd Avenue, it's a Fifth Plain Creek land development, they want to expand the boundary out into that.

DELEISSEGUES: Okay. Vancouver?

STEINHAUER: Yeah.

DELEISSEGUES: And the other question I had, and maybe this is more for Pat, but depending on the specific conditions that you find the buffer area could actually be greater in some cases than the old ordinance rather than smaller; is that true or not true?

LEE: Yeah. I think one of the things that is different about the proposed ordinance based on the ecology guidance is kind of this relationship between the land use intensity activity and the buffer and those two things working together as indicated in the case study summary. In some cases that will result in a different buffer that may be a larger size, in some other cases it may be a reduced sized buffer based on that relationship which will be unique to any particular proposal that comes forward.

DELEISSEGUES: But I appreciate your comments.

STEINHAUER: Well, how would we know what that buffer would be, then, if we're going to lose it or gain?

DELEISSEGUES: I'm not sure.

WRISTON: You'll get notice of a -- like in your neighborhood or whatever you'll get notice of an application going in and I believe it would go through this -- my answer would be it would go through the process and as it goes through the process you would have an opportunity to comment and see how it's applied.

LEE: Yeah. If I, and I, this is oversimplifying so let me state that up front, but one of the attachments to the original staff report, the last one, sort of identifies the range in buffers that may be associated. It says Exhibit 8, with different classifications where we have the wetland rating how it turns out, the land use category, is it a proposed land use activity of high intensity, moderate intensity, low intensity. What the existing prescriptive buffer is recognizing there are opportunities to reduce that buffer size through design, what is proposed in the current ordinance which actually is consistent with what is proposed in the Department of Ecology guidance. So that's a quick glance at, at least what the range of variation could be, but again, it would be determined by kind of that site-specific analysis of those two factors.

WRISTON: Right.

STEINHAUER: So has anybody done any of those analysis in that area for the development to go through?

WRISTON: They'll get done on a development by --

LEE: If the area you're talking about I think is proposed to be brought into the urban growth boundary, it is not in the urban growth boundary at this particular point in time, if it were to be brought into urban growth boundary, then in all likelihood you would be looking at a high intensity land use activity in that area which would dictate a larger buffer.

STEINHAUER: Very good. Thank you for your time.

WRISTON: Thanks. John Karpinski. To the extent you can, I'm sure you have a lot of comments, John, to the extent you can --

KARPINSKI: I'll try to keep it under two hours.

WRISTON: Yeah, they're giving me heat up here, they're missing Vaughn probably.

RUPLEY: Not probably.

WRISTON: Not probably, I know I opened myself up for that one. Stupid me.

RUPLEY: And you knew.

WRISTON: Go ahead, John, I'm sorry.

KARPINSKI: John Karpinski, here on behalf of CCNRC. I was also a member of the working group. I think this was the first County group I was a member of since Commissioner Morris took office.

WRISTON: Got to get your address.

KARPINSKI: 2612 East 20th Street in Vancouver.

WRISTON: Thank you.

KARPINSKI: Let me tell you the big picture of what's going on here. The big picture is that the ordinance has some good buffer sizes and some good replacement ratios, but the bottom line is that that's been counterbalanced by some cooking the books, some double dipping, some exceptions, putting some things into some bad categories and the bottom line is what good things they've given with one hand, they've taken away with the other hand.

And what I would like to talk about is the best available science requirement because we haven't really focused on that yet because when we deviate from the best available science here, we're supposed to talk about that, we're supposed to have a discussion of that. The best available science requirement became substantive in a case called Clark County Natural Resources Council versus Clark County, coincidentally enough, and it says basically when you're not following the scientific data, you better have a darn good reason why you're not going to do that, and when we were on the committee we said, okay, well, here's the things that we're doing and then there were things that the technical group said, well, we're not going to do this for administrative reasons or logistical reasons or political reasons or whatever, and when we come to the hearing we're going to make it really clear that we're not following best available science here and we're going to make it very clear that we're not following here and we're going to wave flags and say this part of the ordinance isn't best available science and we're not doing that. Well, guess what folks, we're at the hearing and we're not doing that. Those parts of the ordinance got buried very deeply into the rest of the ordinance and we're going to act and pretend like that didn't happen except for the Department of Ecology's recommendations which I'll talk to in a little bit.

So I have five things I want to focus on, four are Mr. Lowry's fixes to the ordinance.

And I have talked with Mr. Lowry about these so this is nothing I'm saying to you that I haven't told him to his face and we've had discussions about them. So the first one is the applicability, which is on Page 1, which is what -- we wanted the broadest applicability, we didn't want this triggering application thing, we didn't want somebody if they're driving their dirt bike in the middle of a wetland and turning it into a motocross track, we didn't want there to be an issue of whether or not they needed to have a permit, we wanted it to be you're destroying vegetation in a wetland, it's a violation. And the way we worded it as on the committee, even the development people on the committee agreed that this was the appropriate thing to do, to add the broad applicability provision. Mr. Lowry unilaterally put a bullet to the head of this and changed it and I said, Rich, what if somebody's driving a motocross, you know, a motorcycle in a Category II wetland and keeps driving it until it becomes a motocross track and then invites all his friends over to a motocross track in the middle of a Category II wetland, is he violating your wording of "applicability" and Rich said I don't know. So he said as far as he was concerned it was a technical issue, that it was a toss of a coin whether the original language or his language should be used. The original language was a little more inclusive, his language was a little more exclusive; the original language covered a little better, his language covered a little less.

What I would respectfully recommend is we go back to the original recommendation. If there's any concern about somebody getting dinged about activities in their own yard, what I would suggest is we add an exception from the City of Vancouver's ordinance for passive outdoor activities. There is Section I which says "passive outdoor activities such as recreation, education, scientific research activities that do not degrade the critical areas, including fishing, hiking and bird watching," that would make sure that people can still take normal recreational activities, would regulate the motocross, would take care of the activities, I ask you first to make that change.

Second, in terms of the threshold, best available science says small wetlands are important, have important functions, this is on Page 5 of the revised ordinance, I ask that the threshold be made 1,000-square feet. Third, you know, it's funny how we can go through 12 drafts of the ordinance and have only 7 exemptions. Mr. Lowry can go through one draft of it and add 7 more. So you go to Page 4 and he doubled the number of exemptions to the ordinance.

LEE: Could I verify just for a moment?

WRISTON: That would be great.

DELEISSEGUES: Yes.

LEE: The additional exemptions on Page 4, is that the one you're talking about, John?

KARPINSKI: Yes.

LEE: One of the objectives that we as staff were charged with was to the extent possible align the habitat ordinance and the wetland ordinance, so basically the source of f and g was the wording that the utility group presented to the habitat citizens group and has been passed on and the others are exemptions that are in the habitat ordinance and it was felt in the interest of aligning things that it would be appropriate to include those. I just wanted to clarify the source of where these came from.

WRISTON: Okay. Thank you, Pat. John.

KARPINSKI: It doesn't mean that they're a good idea. I mean let's look at m for a second, this is the bottom of Page 4, let's talk about best available science. Tell me the scientific justification for flat exempting land disturbance in a wetland, in a wetland buffer of 300-square feet. Anybody. What's the scientific justification for that? There isn't any.

MOSS: There's probably a practical justification for that, John, whether there's a scientific one or not.

KARPINSKI: We need to have some sort of but --

MOSS: You want to plant a tree, John, does it take a little disturbance to do that. I mean that's a benign activity. There are many activities like that, we're talking about fairly inconsequential items at work here, five cubic yards.

KARPINSKI: 300-square feet --

MOSS: 300-square feet.

KARPINSKI: -- to plant a tree, you got a big root ball there, buddy.

WRISTON: All right. John, we got to get --

KARPINSKI: Okay.

WRISTON: Four.

KARPINSKI: Four.

WRISTON: Thank you.

KARPINSKI: This is from the utility group. Okay. The utility group not only got an exemption that no matter what they, they can never be turned down for a permit ever, which I have a problem with. The private sector, Jeff, you'd think you'd have a problem with that, the private sector can be turned down for a permit but utility can never be turned down for a permit. But Mr. Lowry on Page 31 took out the only substance in

their programmatic practices which was their following of best management practices. Why don't utilities have to follow best management practices. They only have to do maintenance. I talked at this and I thought we agreed on this one and --

LEE: That wasn't -- I mean you're talking about -- which provision are you talking about, John?

KARPINSKI: K.2. K.1.e.2, the replacement of best management practices with maintenance practices on the bottom of Page 31.

BARCA: Line 43.

LEE: Again, I'm not -- just trying to clarify the source, that was I believe wording that came from the utility group, not from Mr. Lowry.

KARPINSKI: Okay. But it still should be fixed. Utilities should follow best management practices --

WRISTON: Okay. We'll look into that.

KARPINSKI: -- I would like that to be done.

WRISTON: All right. One more.

KARPINSKI: Now one more is just I want to talk about and I've already put in writing my comments regarding the cumulative effect of the exemptions that we're talking about here. You know, we have you cannot reduce the number of rural lot exemptions. So if somebody bought a 100-acre peat bog in a Rural-5 zone, you could still build 20 houses on it according to, according to the ordinance and we're trying to justify these according to best available science. So what does the Department of Ecology say to these according to best available science. We're concerned that some sections of the proposed ordinance will not further the loss, the goal of no net loss of wetlands functions. Of course the goal of no net loss of wetlands functions was removed in the last draft.

The provisions in Subsection 2 are not supported by our reading of recent scientific literature on wetland management. This section places arbitrary thresholds on buffer widths that is not consistent with our review of best available science. The County is in danger of being arbitrary and capricious. We do not believe that the science supports reducing buffers to low intensity buffer widths for all wetlands. This strategy virtually ensures wetland functions and values in Clark County will be degraded. Ecology believes the provisions in Section 40.450.030.B.3 Sub c could result in significant adverse impacts to wetlands in Clark County. Ecology doesn't normally talk like that, that's pretty strong language for Ecology. That is the cumulative effect of all of these layering of loopholes and exemptions and all these things that are all very technical,

sort of like the vacant buildable lands analysis, they made the model really, really, really technical, really hard to understand, and then they goofed up the transmission with it, so unless you really know what you're talking about it's really hard to explain but it doesn't run right. Okay.

But if you look at the people who know and you look at the technical details, there's a lot of problems in here and it means that the engine isn't going to run the way it's supposed to be and wetlands aren't going to be protected the way they're supposed to be protected and we're certainly not doing best available science and we're -- certainly when we're deviating for best available science not saying where we are and why we are and if we're going to do that let's be honest about it and say like we said in that one case, okay, it's an administrative thing, we think it's a small thing, fine, let's do that, let's not bury it in the fine print and hope we don't notice, let's be honest about it and say what we're really doing here. Thank you very much.

WRISTON: Okay. Thanks, John. Questions? Oh, George.

VARTANIAN: No. No. No.

WRISTON: Go ahead, George. No. No, go ahead. It's just you'll learn it's always dangerous to ask John.

VARTANIAN: No, I know John. John and I are usually on the same -- John and I are usually on the same side of most things but not always. As far as the administrative matter that you were discussing being too small to concern ourselves with, usually I don't take a very good view of we're not going to do this because of an administrative problem, there's a reason for the Code and if there's something specific maybe we could address it in saying even if it's just an administrative matter, if there's an impact on the environment, on the wetland, you know, I'm not sure administrative matter should outweigh the long-term effects of an impact to the environment, number one, not to soap box. Most of the exemptions that you think are referring to have to do with fixes or restorations or going in and doing something that needs to put something back the way it was before something broke like the emergency power line, maintenance and all that good stuff, would it make you feel better about the exemptions if the term and restore it and restore the habitat or the wetland back to the condition it was in before the restoration or the reason we went in there to fix this thing?

KARPINSKI: Well, it's not just that, it's the miss -- that's a Grosz oversimplification of what's going on because some of it is for example they say golf courses can have a medium impact when DOE says golf courses always have a high impact.

VARTANIAN: Yeah, but that's --

KARPINSKI: It's a million things spread all over the place, that's the problem, and I didn't want to take two hours just to go through all of them.

VARTANIAN: No. No. And I appreciate that. I'm just saying but there we have a situation where we have a difference of opinion about what does the best available science say which is what court cases are made of. I mean when somebody says it's a minimal impact and somebody else says it's a substantial impact and you have competing arguments of science, that's how we go to court all the time.

KARPINSKI: Well, yeah. Actually there was no real discussion that it wasn't, they just stuck it there.

VARTANIAN: Oh, thank you. Okay. Okay.

KARPINSKI: You have to realize that a lot of these things just gets put there on kind of a nudge, nudge, wink, wink, not because there's what I would consider a legitimate difference of scientific opinion, it's just it makes the spice flow a little better in terms of it makes development easier to approve. I like the movie Dune, sorry.

VARTANIAN: Well, okay. What would you suggest, that the committee re-form itself and take another look at the new ordinance?

LEE: Let me suggest --

VARTANIAN: I'm not proposing that, I'm just -- I'm not proposing that by the way, I'm just asking how you would feel about that?

KARPINSKI: Well, it all depends on, you know, if you buy what I'm saying, the easiest thing to do is just to simply direct staff to make changes consistent with the DOE's recommendations, you don't have to reformat anything to do that.

VARTANIAN: Okay. All right. Thank you.

LEE: What I did want to say is it is fully our intent when we get to the stage where we can draft an adopting ordinance to make the necessary findings that John is speaking about where we believe we may be departing from best available science or we disagree with Department of Ecology guidance of what best available science is, we will in fact include that language in the adopting ordinance. Recognizing that we had not yet gone to the Planning Commission, we don't know what this ordinance is going to look like just yet, we thought we would wait until we had your recommendations to draft that.

WRISTON: Appreciate that. Further questions?

BARCA: I guess I just have to say, then, based on what you were saying, Pat, because there isn't any language in here that shows us why there is a deviation from best available science --

LEE: I'm happy to -- after the testimony I'm happy to walk through the ordinance and talk about the specific DOE comments where staff's view of the issue is in terms in an area of disagreement, is an area of administrative concern for us, whatever the situation is.

BARCA: Yeah. Because without that information it makes it difficult to understand why there's departures.

LEE: Yes. And as I -- Department of Ecology is the lead authority. Not every professional biologist will agree with where that came out with. So we did talk about these issues and if you want to use the specific example of golf courses, actually the highly groomed areas of greens and tees are in fact in the high-intensity category, fairways is what was called out in the DOE letter, that was the result of a discussion by our technical group and looking at the way fairways are typically laid out and the amount of grooming and fertilization that goes into those vis-a-vis those other areas, those other high intensity areas. Now I'm not trying to necessarily defend any position, I'm just trying to articulate that that was part of the discussion and this is where the proposed ordinance came out.

WRISTON: I think -- do we have somebody from Ecology here? Not to bring them up now, but we do have someone from Olympia, but no one from Ecology?

LEE: I don't know if --

WRISTON: Okay. I was just curious, it says Capitol Way in Olympia and I thought, well, maybe from Ecology so. Okay. All right. With that let's take a seven-minute break.

BARCA: Seven minutes.

WRISTON: Okay. A little longer. 10 minute. Long haul. 10-minute break, 12 minute, 8:25, 12-minute break.

(Pause in proceedings.)

WRISTON: Return to the Planning Commission hearing on the wetlands ordinance. We have a couple of things we want to take care of. One, how many people are here for the biannual code amendments? Anyone? Ready to talk to you. Okay. We I don't think given, given how we're going tonight and given what's left on the sign-up sheets and probably what's going to be a fairly detailed Planning Commission discussion, I don't think we'll be getting to those tonight so I'm going to go ahead and just tell you guys now rather than tell you at 11:00 tonight when we're no good anyway, so those will be rescheduled to a later date, we'll probably figure that out. And I don't want to figure it out right now because we have another matter of urgency that we got to get

Ron here to talk a little bit before he has to leave, but we'll -- before the end of the night we'll figure it out to a date certain when we're going to hear that and then if you obviously want to know that and you're not going to be here and you're not going to be watching, ask Sonja or get on the -- Sonja can let you know.

The second thing is that Ron unfortunately has to catch a plane tonight at 9:30 of which he's pushing it here a little bit and he would like to say a few words before he leaves with respect to the wetlands ordinance, so, Ron.

BARCA: Thank you, Mr. Chair. Yes. I apologize for not being able to catch everybody's testimony before we go into deliberation and what I'm hoping is that as a group we'll take a good look at what we're starting here as a precedent for the way that the County envisions itself. I think we have an opportunity to do this ordinance better than our neighbors to the south and perhaps be a model for the state in the way that we execute the wetlands ordinance. I think it's really vital the way that we see ourselves in the County as not only salmon friendly but really conscious of the aspect of quality of life that we don't make choices that degrade that quality of life on a fashion that is more or less death by a thousand cuts. I see a lot of merit in the way that the wetlands ordinance was put together, but I was most disturbed by the thought process that the no net loss of function, of wetland function, was taken out and I think that's the part that really bothers me the most and something that I would have driven the discussion towards the idea that I believe through appropriate mitigation standards and leadership from the County using best available science that we didn't necessarily have to give that up to make a good model ordinance and I was, I was disturbed that that was taken out of the ordinance.

And that being said, I've heard a lot of testimony tonight that has been requesting our ability to look at the idea of protection and preservation and I believe that this ordinance is really meant to do those things, we just have to make sure that the intent is executable. And I really appreciate the time to get on my soap box and then get on an airplane. Thanks.

WRISTON: Thanks, Ron. Okay. Back to the sign-up sheet. I'm having a problem with the last one on this so I'm just going to say Richard from Yacolt. Is there a Richard from Yacolt here and if you can give us your full name and address, I'd appreciate it.

KENNON: It's Richard Kennon, K-e-n-n-o-n, my wife complains about my spelling also, 37814 NE 234th Street, Avenue rather, Yacolt, Washington 98675. I'm a director with the Native Fish Society and my comments are for them. I'd like to read a little bit out of a report called the -- it's called The Rusted Shield and I'll leave it for you, it's put out by the Bullitt Foundation in the year 2000, it's the government's failure to enforce or obey our system of environmental laws threatens the recovery of Puget Sound wild salmon and they talk a little bit about wetlands in here.

Mitigation aside, the Federal agency responsible for protecting wetlands, the U.S. Army Corps of Engineers, has done little to stem their disappearance. An up-to-date review of the Corps' records reveal the agency has cut inspections for possible violations by 40 percent since 1992. In 1998 it rejected only 3.2 percent of applications for major wetland projects while the nation is losing more than 100,000 acres of wetlands annually. Congressional budget freezes, now this was back in 2000, have forced cutbacks in wetland staff and Corps employees reports that they are pressured to process applications faster and avoid costly enforcement efforts. The government does not monitor enough to make sure that people obey the law or that efforts to restore natural systems accomplish anything. Without consistent monitoring government cannot measure progress and therefore does not know whether the accomplishments it claims are real or illusionary. The public is fed the impression that national -- the nations waters are healthier than they used to be, but the quality of monitoring and the lack of honest reporting casts a dark shadow on that presumption.

Neither EPA nor the State regulatory partners can produce reliable data that accurately measures water quality trends to support claims that our waters are getting cleaner. The Nation's water quality monitoring and assessment system is badly broken and is not taken seriously by government agencies charged with carrying it out. States manipulate numbers in order to falsify portrayal concerning progress of water quality when in fact the fragmentary reliable information exists only suggests the exact opposite. Although requirements for accurately reporting the quality of Nation's waters are quite clear in the legislative and regulatory framework, EPA does not enforce these requirements. The government asks the wrong questions. When states assess water quality it measures chemical purity rather than biological health. The Clean Water Act explicitly calls for protecting the biological integrity of national waters and calls for analysis of the extent to which all navigable waters of each state provide for the protection and propagation of balanced population of shellfish, fish and wildlife.

I'm going to drop down. As required by the Growth Management Act every county on Puget Sound has adopted a sensitive area ordinance. The GMA also requires Counties and Cities to include the best available science and development policies and development regulations to protect the functions and values of critical areas. If anyone wants to destroy wetlands, critical area ordinances require mitigation; the more valuable the wetlands, the more habitat the developer must create elsewhere. That cost money but in the case of Class I and Class II wetlands it turns out to be essentially futile because their functions are virtually irreplaceable. Actually virtually all mitigation attempts may be futile. A 1998 King County study of 38 mitigation products, projects, excuse me, found that 97 percent did not work. At 9 sites the required mitigation was never done, at 23 others the mitigation did not meet County performance standards. 5 of the 6 projects that met standards did not actually replace the functions of wetlands that had been destroyed. If replacing the function of lost wetlands was the criterion, only 1 of 38 mitigation projects succeeded. A study of recent mitigation projects might find a higher success rate or it might not, no one knows. We do not know that develop -- we do know that developers have destroyed

habitat. We know that some of the same developers have spent money to replace that habitat and we know that in many cases they might as well have used that money as part of the fill, it was wasted.

King County's experience with wetland mitigation has been replicated in other jurisdictions. A Federal study of mitigation projects in the Northwest reached similar dismal conclusions. Researchers from EPA and the U.S. Fish and Wildlife Service looked at 17 mitigation sites in the Northwest. It was not possible to determine whether compliance had been obtained in over half, 53 percent they wrote, whereas 29 percent of the projects were determined to be clearly out of compliance and 65 percent were judged not to be functioning well ecologically. Of the projects investigated only 18 percent were judged to be in compliance with regulatory requirements. That of course begs the question of whether regulatory requirements were adequate in the first place.

The very concept of mitigating wetland losses seems seriously flawed. It reflects an assumption that natural systems can be destroyed with impunity for financial gain then recreated in a less valuable site. Some people find that, the assumption, arrogant. James Karr says that mitigation amounts to a license to kill wetlands and warns that the idea of mitigation has started appearing in discussions about salmon restoration.

What The Rusted Shield has pointed out, that our agencies have not been doing a good job, I think we can change that here in Clark County. Wetlands are important because they store water and prevent flooding and we've seen a lot of it this year. They replenish our drinking water. When wetlands are built on, rainwater can't soak back into the ground and people are left without enough water in their wells. It's interesting, I know some groups here in the County have petitioned the Federal government to declare the aquifer under the counties one aquifer and not separate ones. So all these different wetlands are recharging the same aquifer if you think about it. The wetlands improve water quality by filtering out sediment, chemicals, oil and other pollutants and provide a place for fish, plants and animals to survive while improving our quality of life, essentially especially for those of us who enjoy fishing, hunting and being outdoors.

Just some key points for you to consider. This County has invested in salmon restoration and supports recovery. Wetlands are -- protection are vital to protecting clean water for people, salmon and Steelhead. This County has invested \$20 million alone in the East Fork on restoration and buying up lands. I recommend you go back and adopt the original wetlands working group version of the ordinance that it started out very well, plus the Department of Ecology's comments for the best protections for our wetlands. Prevent the use of buffer averaging in addition to other mitigation which can severely weaken the protections. Do not exempt small wetlands or currently farmed wetlands. A properly crafted exemption for existing farms can work, but exempting the wetlands just make it easier to convert working farms for development. Poorly planned development cost taxpayers dollars and threaten our quality of life. This update gives us a chance to preserve our drinking water, protect our fish and

wildlife habitat, recharge our aquifers, we just have one as I said before, and reduce flooding. That's why I urge you to take the lead and strengthen our wetland protections.

And one last thing is I don't find in here there's really any monitoring of the wetland permitting and conditions and working around them. If you don't monitor what you require, you don't know whether you're actually protecting them or not, so monitoring is very important. A suggestion you might consider of having the building inspectors for the County be trained when they go out and work and do the building permit checks to also be able to check and see that the wetland requirements or critical habitat requirements are also being followed. Thank you.

WRISTON: Thank you. Any questions of Richard?

RUPLEY: I actually have one of Pat about what you said, how are wetlands monitored?

LEE: How are wetlands or wetland mitigation sites --

RUPLEY: Mitigation, excuse me.

LEE: A mitigation site is part of the proposal is to submit a mitigation plan, a component of the mitigation plan is a monitoring program. In the proposed version of the ordinance we suggest at least a minimum five year monitoring. We also suggest both performance assurance to make sure the mitigation plan is implemented as it was designed and a maintenance assurance, financial assurance, so that after the monitoring period if there needs to be some remedial work that that can be taken on.

RUPLEY: So that's proposed?

KENNON: Is it?

RUPLEY: Okay. And so what is the current practice?

DAVIS: The current ordinance has a requirement for a monitoring plan in the mitigation plan and specifically we monitor mitigation sites, we don't monitor wetlands that aren't directly impacted.

RUPLEY: Right.

DAVIS: And the current ordinance sets the monitoring period at five years. And we do have provisions for financial assurances but they're not as strong and well-defined as they are in the proposed ordinance.

RUPLEY: Okay. So then the next question would be is he's talked about research

and you hear this a lot in terms of mitigation sites not being successful, how would you characterize the sites that we have in Clark County in terms of their success? Is it similar to what he quoted that comes out of the Bullitt study? Is there newer data to say that we're doing a better job or not?

DAVIS: We haven't done a specific study in Clark County so I can't speak specifically. We do release financial guarantees. We generally have very simple performance standards, essentially it's percentage of plant survival, there are some standards that relate to canopy covers that are based on poor assumptions that are just not achievable in the time periods that we set out, so we primarily focus on the plant survival. I do see sites that are perpetually paying premiums on bonds to avoid having to meet those requirements. We do occasionally run into a site where the mitigation was never completed and we probably -- I mean the only measure we have is the financial guarantees we release. We probably release 10 to 12 a year, but we're issuing about 20 actual permits that require mitigation a year, so there is definitely an imbalance there.

RUPLEY: Okay. Okay. Thanks.

LEE: I could -- I want to quote from a summary statement and it's, again it's not necessarily specific to Clark County, but a summary statement from Volume 1 of the State Guidance, A Synthesis of the Science, which says: Ten percent of created wetlands were in compliance, 70 percent of creation projects establish the required acreage of wetland and 60 percent of the created projects were either fully or moderately successful. So that is in the Ecology Guidance Manual and speaking to the mitigation issue.

RUPLEY: So about a ten percent increase from what he talked about?

LEE: Yeah. And this was specifically talking about creation I believe, one of the mitigation techniques that's available.

WRISTON: Thank you, guys.

VARTANIAN: If I might.

WRISTON: You bet, George.

VARTANIAN: I guess two questions. When you say "monitoring," who is it that's doing the monitoring and when is it happening? Is it just before the release of the bond or is there an ongoing monitoring happening? And I'll get to the second one after that.

DAVIS: The monitoring is the responsibility of the developer for that monitoring period. The Code requires that they submit annual monitoring reports. We get I would

estimate probably 25 to 40 percent compliance on that. We just don't have the resources to enforce that at this point in time, we're too busy reviewing permits, we don't have the staff to follow through and make sure the annual reports are coming in. We do require a final report if there's a request to have a financial guarantee released and we do evaluate the condition of the site at that time and require remedies if it's not adequate before we will release the bond.

VARTANIAN: When you say that you mean somebody goes out and visits the place?

DAVIS: Yes, I do.

VARTANIAN: Oh, okay. All right. And second about the mitigation, that's one of the problems I've always had, given the approach to the best available science how do we reconcile the use of best available science when we pretty much understand that off-site mitigation or created mitigation is not really all that successful?

LEE: I think the primary tool that DOE has suggested is the mitigation ratio requirements, that's why you see, you know, a four to one replacement ratio or -- and an eight to one replacement ratio or whatever it is because of the probably, one, because of the risk of the site not being fulfilled and also in part in order to assure that you're probably approaching what the functions and values of the original wetland might be you improve an area that is larger so that on an overall net basis there may be some compatibility there.

VARTANIAN: Okay. Don't misunderstand my comments because I'm not taking a position here on to develop or not.

LEE: No. No. I'm just trying to respond.

VARTANIAN: It's a matter of I'm trying to understand are we having success creating mitigation or are we just getting, you know, farther in debt, if you will, for the land, that's all. I mean if we double the size of a mitigation creation, a creation of a wetland, are we still failing even though we are doubling the size of the created wetlands?

LEE: I think as Brent said I don't think we could give you any factual response to that because we haven't been doing that type of monitoring.

VARTANIAN: Okay. Okay. Thank you.

WRISTON: Further questions? All right. Thank you, Richard.

KENNON: May I add one more thing?

WRISTON: You bet.

KENNON: Wouldn't it be better to have somebody that doesn't have a financial interest in the monitoring take care of the monitoring? That's a question for you guys.

WRISTON: Okay. We'll consider that.

KENNON: Who do I give this to?

WRISTON: Right over there to Sonja. Thank you, Richard. Bill Jameson.

JAMESON: Good evening. My name is Bill Jameson. I live at 903 West 43rd Street in Vancouver, Washington, and I work for the Department of Assessment and GIS specifically, the current use group, and we've met a number of times over the years going through those applications. I wanted to share a story with you just as a different perspective, not to take a position on wetlands one way or another, but the current use programs, the forest land, the timberland, the farm and ag land provisions of the Open Space Taxation Act and the Forest Land Act were passed in the early '70's and that was a time when I was in college and we were just starting then to start thinking about environment and ecology and so we're dealing with a very old law that is being impacted a lot by all of these new ordinances and this new awareness that we have with our environment. And so this week I've had a number of calls from people that have read about this meeting and that were unable to attend and I thought I would at least just come and share some of their thoughts with you so you'd have an idea of what some of these small landowners are concerned about.

To qualify to stay in a current use program, which by the way is a tax -- it's a tax relief program where it's an exchange of using the land in a particular manner, you have a lower assessed value so your property taxes are lower, in order in the long run to preserve land rather than have it develop, that's, that was the initial purpose for it, so these people have requirements that they have to meet. If you're in a forest or timber program, you have to be able to grow and harvest timber. If you're in a farm program and if you're at less than 20 acres, you have an income requirement that you have to meet. If you are 20 acres or more in farm and ag, then you don't have a specific requirement, income requirement, to meet but you do have to farm it with the intent to make a cash profit.

So what we were seeing and what their concerns are is that if they're prohibited from doing what they're supposed to be doing on part of their land, then by law we need to remove that part of the land from the program and value it at its market value and then they, they won't have to pay the back taxes. Because if there's a law in place that prohibits them from doing something that they were allowed to do previously, they can be removed and they're not subject to any of the deferred taxes, interest and penalty; however, some of these people may not have enough money to stay in the program after they've had some removed and so that's the concern that I've been hearing this week is what's going to be the impact on us in the long run with this program. And so that's all I wanted to share with you is that there is this other element out there that

people do have a concern with.

WRISTON: Okay. Questions of Bill?

MOSS: Yeah, Bill, I do have a question. I know that this is a deferral program and if somebody drops out of the program, they have at least seven years of back taxes and interest and possible penalties to pay. Now you were saying that if the land is taken out, if you took it out because it couldn't be farmed, then it wouldn't have to be paid on that, but later you said some of these people may not have enough land left to stay in. Okay. If that remaining land that could be farmed but is too small in acreage to qualify them for this program now is going to be taken out would they then have to pay the penalties on that land?

JAMESON: It's not really clear and I don't have that --

MOSS: Then it's not.

JAMESON: -- I don't know that answer. I read it today in anticipation of coming and speaking tonight and it's really not clear. I would have to go to the County Prosecuting Attorney and ask them for an opinion on that. It hasn't been an issue to date. Farm land, if you have a house on the land there's no minimum acreage, there's just an income requirement, it has to be greater than one acre because there's one acre to set aside for a home site on all of these lands that are in any of these programs. It would affect timber because there's a minimum of five acres required, so if you have a six-acre parcel with a house and you lost any land that you couldn't grow and harvest timber from, then they have exposure to be -- they would have to be -- have an exposure to the whole program.

MOSS: Yes.

RUPLEY: What's the income requirement for farm?

JAMESON: Well, there are actually five.

RUPLEY: Five incomes?

JAMESON: Yes. The first one is you have to weigh whether they have 5 or more, 5 or less than 5 acres of classified land and then you have to determine if the current ownership was established before or after '93. If the ownership, if you -- if the current owner owned the property before January 1st of '93, they have to do \$1,000 a year in Grosz income whether it's 1 acre or 4.99. If they have -- if the ownership was established after January 1st or after 2002 the income requirement is 1500. Between 5 acres and 19.99 acres, if you owned it before '93 it's \$100 an acre and if you bought it or acquired your interest after '92 it's \$200 an acre. And as I said earlier, if it's 20 acres or more of classified land, not parcel size but land that's actually classified as

farm and ag, you have to farm it on a continuous -- on a regular basis with the intent to make a cash profit from a lawful crop. Well, I know it's a joke but they inserted that into the law after all because there was a marijuana grower that went to court over it and so they had to change the law to say a lawful crop, but that's, that's there now.

RUPLEY: Thank you.

WRISTON: Okay. Any other questions of Bill? All right. Thanks, Bill, appreciate it.

MOSS: Thank you.

JAMESON: You're welcome. Have a good evening, thank you.

WRISTON: Thanks. Mary Ann Simonds. Is she still here? Mary Ann? Okay. Robert Dean.

DEAN: My name is Robert Dean. I live at 7101 NE 74th Avenue, Vancouver 98662. I'm speaking as a landowner and as a property owner. The purpose of this hearing is to protect critical lands, to protect wetlands, I'd like to address another area that needs to be protected and that is private property rights. Private property rights are guaranteed in both the Washington and the U.S. Constitution, so I think it needs more than just passing mention, and it does get passing mentioned in this proposed ordinance.

One of my main concerns here is private property rights and also the Category IV designation. As a land surveyor I have to go out there and measure these Category IV wetlands and apply the buffers around them. Sometimes we'll go out onto a job and we'll drive the truck out on there and the wetlands biologist will come out and he'll drive his vehicle out there and proceed to put flags around and say this is a Category IV wetlands and you look at that field and it doesn't look any different from that, this portion that is Category IV and that portion over there that's upland except it's got these flags around it. As a property owner I have bought -- I have 23 acres up in Ridgefield and there are wetlands on this, there are Category I wetlands, there are Category II wetlands, there are Category III wetlands and there's Category IV wetlands, I can tell that is a wetland, there's geese and there's ducks and there's water, but I cannot tell a Category IV wetland.

So when I buy this piece of property I say, okay, I'm not going to build down there, I'm going to build up here on this field and so I hire an architect, start to do my planning, talk to some bankers, see how I'm doing, one day I'm going to build a house on that property in Ridgefield, that was not a problem for me, the wetland ordinance was not a problem, because there was no triggering application to say that this, this wetland had to be protected, so I could build, I could build my house on the Category IV wetland I take it or within the buffer of it because there is no buffer because there's no triggering mechanism, no triggering application.

Now you guys are going to take out that triggering application so now I'm going to have to say when I go to get my building permit they're going to say are you on a wetland, well, it's not mapped but neither were any of those others that I've surveyed all over Clark County. The only time they knew that that was a Category IV wetland was because they paid \$2,000 or \$3,000 to a wetlands biologist and maybe \$2,000, \$3,000 to me to go map it and they're doing a development, they're doing a short plat, they're doing a subdivision and so it's covered in there pretty well. But a property owner who's going to go out there and, and build a house, or in this case as on Page 1, Page 2, reasonable use, if you're extending your house more than 25 percent, you're going to have to now say whether this is a wetland or not, you're going to have to know where that wetland is, you're going to have to pay for a wetlands biologist to come out and stake it for you and you're going to have to get a survey to map it, maybe it's not 10,000-square feet, maybe it's only 9,000-square feet, maybe it's not 2500-square feet, whatever it is that you're going to establish as the cutoff for a Category IV wetland it's going to have to be established, it's going to have the -- it's going to have to be measured and verified so somebody's going to have to pay for a survey, somebody's going to have to pay for a wetlands biologist just to come out and check before you can even extend your house 25 percent and for what, for a Category IV wetland that, let's see, page, Page 8, "Category IV wetlands shall have the lowest levels of function and are often heavily disturbed," and then further on down, "these wetlands may provide some important functions and should be protected to some degree."

You're going to, you're going to set aside somebody's property, like that Case Study Number 3, there's about a quarter of that property taken out by Category IV wetland and the buffers, that's a quarter of this property that is zoned commercial in this hypothetical case. There are properties out there that has got more than a quarter of their property taken out by Category IV wetlands I can assure you. And you're here to protect critical lands. What is so critical, what is so important about a Category IV wetland that you'd put that aside for perpetuity, you're talking about for perpetuity, you're going to take an area the size of maybe two football fields out of somebody's property and say that has to be protected. For what benefit. You know, if Kent can address what the best available science is to justify that I'll wait to hear it.

But the other thing I'd point out that when you talk about or reasonable economic use has not been extinguished so you can justify taking, you can justify taking most of somebody's economic use that as long as you don't take all of their use, then you're standing on good legal ground, well, I'd point out that that area whatever size it is all reasonable economic use has been taken out of that property. Even if you've left some, left somebody a little corner someplace, you've taken somebody's value so.

WRISTON: Thanks, Robert. Any questions of Robert?

VARTANIAN: Of course.

WRISTON: George.

VARTANIAN: You indicated earlier that you had an experience where you went by a piece of property and it looked like a piece of property like any piece of property, but then a biologist came along and marked it as a Category IV with buffers. Did you approach the biologist at the time and ask him what makes this?

DEAN: Yeah. Yeah.

VARTANIAN: Did he give you an answer?

DEAN: They dug pits down and I think they went down to, oh, a foot or eight inches, I don't remember what, and they found little specs of iron in the soil and that, and also two other indicator species which are growing everywhere anyway, that along with these little specs of iron told them that the water table rose so much and so therefore it was, it was Category IV. It was Category IV because of it being disturbed, it had been farmed on for forever.

VARTANIAN: Okay. And about the buffer, and I may well be off on a broccoli on this, but I'm looking at Exhibit 8, do I understand this correctly that a wetland rating Number 4 currently has a 50-foot buffer? And I may be not reading this right too so.

DAVIS: That's the base buffer, yes.

VARTANIAN: And it looks like it's being reduced --

DAVIS: Well --

VARTANIAN: -- on the Draft 10 and DOE. Again I may be reading this entirely wrong.

DAVIS: The buffer -- actually for Category IV wetlands the buffer range is the same, it ranges between 50 and 25 feet, the minimum is 25, the maximum is 50, how you get there is going to be different under the new ordinance.

VARTANIAN: Okay. But I mean we do have a buffer in existence today?

DAVIS: Correct. Correct.

DEAN: You're taking area of the wetland you're taking out and then you're taking the 25-foot strip around adding to it.

VARTANIAN: Yeah, I'm not saying good, bad or dutch, I just want to make sure I'm reading this properly, that's all.

DEAN: (Inaudible) any time you'll reduce these buffers I would applaud, but I don't see

why you come up with 25 feet, you know, I would say nothing would be good enough. And then why are you protecting a Category IV. I suppose it's coming down to you from the State, I don't know, but I don't see any benefit in it and I don't know that anybody has presented any benefit yet.

WRISTON: Okay. Any further questions for Robert? Thank you, Robert. Appreciate it. DenMark Wichar.

WICHAR: Actually I signed that paper thinking it was an attendance sheet.

WRISTON: Okay. Well, that happens. We still need an address if you're going to, a name and address.

WICHAR: DenMark Wichar. 711 West 25 Street, Vancouver, Hough Neighborhood. I came here really to just listen and to learn and I've learned a lot and so I think I want to share a couple of random thoughts as I've been here for the last two or two and a half hours. We get into a lot of trouble in our culture by drawing lines. The big historic map with all of its lines, this is mine, it's not yours, that's yours, it's not mine, we get into so much trouble, I don't think Native Americans had that trouble. I look at these maps and I see all those lines. Is it really possible to draw a line around a wetland. Is ecology a series of jigsaw pieces, you can take this piece and it's a wetland and it comes cleanly separated from its surroundings or is ecology more analogous to a kind of tapestry where everything's interwoven. I live in the Hough Neighborhood, hardly a wetland, but don't I really live in a wetland. Those lines that are supposedly drawn around wetlands do they go straight down toward the center of the Earth or perhaps underneath what we can see aren't there roots that extend across the entire county.

I don't understand mitigation. I don't understand about replacement. Is it okay to take my aorta out of my body and to put it into somebody else's body and consider therefore both bodies are functional the way they used to be. I consider a wetland to be an organism. I see 25 feet and 50 feet and 60 feet, I could spit that far. Those numbers are inadequate and should never be reduced, they should be increased and there should be no exceptions or exemptions for any purpose whatsoever. I know the situation that's similar is the destruction of a forest and supposedly the timber companies replant trees, but they haven't replaced the forest because a forest is not the trees and a wetland is not a certain amount of water.

So I would concur with those people who have urged the high bar, the high standards, strengthening not weakening and doing absolutely everything possible to not lose a single cubic centimeter of wetlands and if there should be any enhancement whatsoever, it should be to increase the amount of wetlands in this county.

WRISTON: Thank you. Any questions of DenMark? Thank you. Tony and Becky Calvert. Steve Madsen.

MADSEN: Good evening. My name is Steve Madsen, I'm the Governmental Affairs Director for the Building Industry Association of Clark County, our address is 5007 NE St. Johns Road, Vancouver. I respect a lot of the opinions that have been presented and I guess I want to start with taking a certain exception to the comment that's been made a couple of times tonight about irresponsible development. The reality is we live in a capitalist society, individuals go into business to make money and provide a living for themselves and their families. If development is irresponsible it's usually done in violation of law. I would take exception to the characterization of development done in full compliance with existing laws irresponsible. If there's any irresponsibility it's on behalf of the governmental entities that are charged with regulation of those activities. I guess I'd like to start with a compliment before I start on my criticisms working, I sat a number of weeks and months on the wetlands ordinance work group and it really was a pleasure to work with those folks. I think everybody there at the table had the earnest desire to create what was the best ordinance possible.

That having been said I struggle to find the purpose of why we're here. The reason why we're here technically is because the State Legislature passed a statute that said Counties and Cities shall adopt sensitive lands ordinances using best available science. They then abdicated any further responsibility by providing any specific guidance on what constitutes "best available science." Part of the problem is is that we've fallen under a discussion both at the County and City levels that best available science is essentially what Department of Ecology says it is. They are talked about as the 600-pound gorilla in the room and my position would be that if the Department of Ecology really had the guts to adopt true best available science, they would propose the model ordinance as a rule under the WACs, let everybody in the state take their best shot at it and then we'd have a statewide environmental ordinance that made sense. You can't tell me that a stream running between jurisdictions that can go from 150-foot buffers under one ordinance to 75-foot buffers under another jurisdiction's ordinance, that those ordinances are adopted under anything remotely approaching best available science, my common sense tells me that just ain't so. So -- and some of that is supported by these case studies and I wasn't involved in, this is the first time I've seen them, but my knee-jerk reaction is with such a minimal difference in the case studies why are we going through all these contortions, it doesn't appear that there's a significant difference in the relative impacts of the two ordinances. It looks like all we're talking about is a difference in semantics and methodology.

So those are my general comments, I'm not going to make specific comments about the ordinance. Clearly from our position it's one that is unnecessary in its entirety. The current wetlands ordinance we believe is adequate to protect when adequately enforced, adequately monitored, when County is adequately staffed that we have an adequate ordinance in place. What I would admonish this Commission because it is charged with the task, what I've said has really no bearing on this Commission because you got to do what you got to do, I would ask you two things. One, before you agree to approve this ordinance I challenge you to understand it. If I can't come to you as a property owner in this county, Joe Property owner with a development

proposal and I can't come to a member of the Planning Commission and say can you tell me how this works, you have no business passing it on to the Commissioners.

The second thing I would add would be that we are in the process of a very complicated and highly contentious comprehensive planning process. One of the assumptions that's part of that process is that 50 percent of all critical areas will convert to some other use. I'm not going to say this on behalf of my industry, but my knee-jerk reaction to that is, you know what, you can designate 500-foot buffers on everything if that's what you want to do, nevertheless there has to be an available amount of buildable land in this county to support the growth that it has projected, that is also a requirement both of this Commission of County government, and so when we start talking after we've passed these complicated critical areas ordinances before the end of March before -- we need to have -- be mindful of that consideration that we need to be prepared to be able to tell the community now that we've established these buffers, now that we've established these critical areas ordinances, where can you build, okay, and we need to ensure that that's a real number, that that's not a fictitious number that's then eaten up by a variety of other critical areas regulations.

One more thing comes to mind and this is just reflects my cynicism of the process, it's ironic that withholding the use of Public Works trust funds for compliance with this requirement is the way they go about it because the Legislature just made a huge raid on the Public Works trust fund which is what meant -- we met with the Hazel Dell Sewer District and the Beacon Hill Sewer District out of Cowlitz County begging for our help in how do we reinstate some of these funds because it's these basic infrastructure investments made available to these municipalities and special purpose districts that allow development to occur and allow and take the pressure off critical areas and so to me that's a, that's a big irony. And those are my comments. Thank you.

WRISTON: Okay. Thanks, Steve. Questions? George.

VARTANIAN: A reputation already. No. Thank you.

WRISTON: No. Any questions of Steve? No. Lonnie.

MOSS: Well, yeah, Steve, I have one that's completely unrelated to anything that you've said, but I've been out of town for a while and I'm kind of curious to know, did you complete the Iditarod?

MADSEN: I'm leaving tomorrow to go to Anchorage.

MOSS: Oh, okay. It hasn't started yet.

MADSEN: The checks the 23rd. Yep.

MOSS: I'm not as far out as I thought.

MADSEN: The first weekend in March.

MOSS: All right. Good. Good luck.

MADSEN: Thank you, sir. Good luck to you folks.

WRISTON: Yeah. Thanks, Steve. Ken Hadley.

HADLEY: I'll pass tonight.

WRISTON: Pass tonight?

HADLEY: Yes.

WRISTON: Okay. Matt Fitzer.

FITZER: Hi. My name's Matt Fitzer. I live at 3117 NW 366th Street in La Center. I'm life -- lived in Clark County all my life, 38 years, and I'm here tonight on behalf of -- I am the Vancouver Chapter President of the National Wild Turkey Federation and I'm here kind of on behalf to speak for them, they are -- although we're not known real good out West yet because there's not as many wild turkey in Washington as there is in South Carolina or other Eastern states, our main goal with the Turkey Federation is to -- is a -- it's a nonprofit conservation organization and our main goal is to preserve wildlife and habitat. And not just for turkey but any, any habitat enhancement or any preservation is good for all wildlife. And it's -- I think it's very important to understand that animals do not know buffer zones. They either like something or they don't.

And as humans we can control water, we can plant plants, but I know also as a hunter that if you're in an area too long the animals will leave; when you leave that area, they'll come back. If there's a development where there's a lot of activity those animals that live there may leave, but when they come back and there's something there that they don't like it's possible they may never come back. And it's Washington's always been known as a state with great quantities of wildlife and I'd hate for it to be seen as a state with pockets of wildlife because once they're gone you can't bring them back, you can't, you can't talk an animal into coming back somewhere.

There's many reasons, you know, in a residential case I believe there's wildlife and humans can exist together in -- on certain areas with the appropriate -- if things are built appropriately that can happen, but in cases of commercial or housing developments where it's just going to take over a whole area that, that's going to affect it a lot more critically.

So I'd just, you know, like to state that the Turkey Federation has always been in favor of taking, taking care of what we have, keeping it good for everyone and for everything and all the wildlife and, and that's pretty much my point I was here for tonight.

WRISTON: Thanks, Matt. Any questions?

RUPLEY: Are you telling me that wild turkeys don't want to come back and live in a three-bedroom house?

FITZER: The three at my house kind of almost do but they're not really wild so.

VARTANIAN: Other than the turkeys who live in it now.

FITZER: Yeah, actually we do, a lot of people don't know there is wild turkey in Clark County now at the very north end of it, they were planted years ago just across, across the border and they have flown across the river and got into Clark County. And that's one important thing, a lot of people have never seen a wild turkey and they'd like to and if it gets overdeveloped they're going to head back out into the hills so.

WRISTON: They're in Wahkiakum County.

RUPLEY: Yeah, we were just saying you can go out to Wahkiakum County if you want to see them.

WRISTON: Yep, see them all the time.

FITZER: Okay. Thank you for listening to me.

WRISTON: All right. Matt, thanks. Doug Ballou. Did he leave? Thank you. Alex Mattila.

MATTILA: Well, good evening, Planning Commission and County staff, my name is Alex Mattila. My address is P.O. Box 243, Brush Prairie, Washington 98606. I am here representing myself, my family and numerous friends in agricultural and timber community. We are very upset that we have to be here tonight because we expect our money to be used wisely and not wasted on inept proposals such as what we consider tonight. This proposal is inept because it is clearly against the law of our land, the State Constitution and the U.S. Constitution. The law states property shall not be taken for public use without just compensation. There is no compensation plan in the proposed ordinance. Pat Lee talked about a Public Works trust fund as funding and that being a consequence for noncompliance. Well, our freedom is not for sale. Don't compromise the freedoms our forefathers fought and died for for any amount of money. If the State wants to hold up our funding, the County can sue the State for the money, it's not the State's money, it's our money, the taxpayers' money.

There is also this ambiguous term "best available science." Well, best available science I'll give you an example of it isn't worth the petri dish it was performed in. Such flimsy standards have led to serious errors such as the unnecessary 2001

shutdown of water to farmers in Klamath, Oregon on behalf of sucker fish. Less than a year after the cut off the National Academy of Science peer reviewed the so-called biology behind Klamath and said there was no sound scientific basis for stopping the water, but yet that boondoggle has caused serious financial ramifications to the farmers in the Klamath Basin. I can use another example, the Endangered Species Act in its 32-year history has shown it to be a complete flop. Of the nearly 1300 species on the endangered list the Act has recovered 10, a success rate of less than 1 percent.

I talked to Pat Lee and other County staff and they have been unable to identify an existing problem here in Clark County that would justify adoption of the proposed ordinance. There is no substantiated tangible basis to justify the existence of the existing ordinance to see whether it is even serving its supposed purpose. The existing ordinance should be reviewed to determine whether it can justify its own existence rather than adding more restrictions to it. This proposed ordinance is clearly a land theft proposal by ordinance under a fuzzy title with no substantiated justification whatsoever. This ordinance is nonsense. When you take a man's land you take his hope, his pride, his opportunity and his future and the future of his children and grandchildren.

Let's step back in time to the times of the Pilgrims. The Pilgrims during their first two years in Plymouth, 1621 to 1623, experimented with taking away property from individuals. The Pilgrims tried communal living where everyone had access to everyone else's property, not surprisingly those industrious Pilgrims who actually worked and toiled on the land became angry because all their bounty was split up among those who didn't work, so the hard working Pilgrims stopped working and the Pilgrims nearly starved. So in 1623 the colony's governor William Bradford divided the land among all the Pilgrim families. Each family owned his own private parcel of land and the Pilgrims flourished and Thanksgiving followed. Bradford wrote that property rights had very good success for it made all hands very industrious so as more corn was planted than otherwise would have been by any means the governor or any other could use. Partially as a result of the Pilgrims' failed experiment in communal living the right to own property and not have it taken by someone is a right guaranteed in both the U.S. and Washington State Constitutions.

The County staff is working hard to find a solution to a problem that does not exist. This is a waste of our tax dollars. The County staff should be re-educated so they can clearly understand the laws of our land so they can propose policy that will protect private property rights rather than constantly infringing on them. They should be proposing policy that makes life better for the landowner, not worse. The County staff must be brought back on track and start addressing real problems that exist like affordable housing rather than wasting their time and all of our tax dollars on problems that do not exist. Start freeing up more land to build on rather than attempting to lock more up. My land is my land, my freedom my freedom. The law of this land states power not granted to the government remains with the people. I manage my land, will

continue to do so, and have no intentions of relinquishing my authority or power to do so to anybody unless I decide I am unable to manage it wisely. I manage my land in the best interest of myself and my family and with the interest of my neighbors in mind so as not to create an adverse impact on them or our environment.

I ask you reject the existing proposal, recommend the existing ordinance be reviewed to see in light of factual evidence whether it is accomplishing a benefit to the public that justifies its own existence. Direct the County staff to get back to reality solving real problems that do exist here in Clark County and stop proposing policy that attempt --

WRISTON: Hey, Alex, I'm sorry, you need to slow down just a little bit.

MATTILA: Oh, okay, I'm sorry.

WRISTON: Sorry about that.

MATTILA: -- and stop proposing policy that attempts to steal by ordinance and regulation the power of the landowner to manage his or her land against their permission. Also they must be reminded that this is America and in America if you feel land should be turned over to the plants and animals, you are free to buy your own land and then give it to the plants and animals. With all facts to substantiate our actions we are going nowhere fast. Let's get back to focusing our money and time on activities that produce a clear beneficial result to us and our community. It has been said that those who reject the appeals for peaceful revolution make violent revolution inevitable. We are asking peacefully that you direct the County to back off and stop this infringement on our property rights. It is our property and our freedom as guaranteed by the law of this land that we are so grateful to God and our forefathers to live in and we fully intend to uphold and defend that law which safeguards our liberties. Thank you.

WRISTON: Thanks, Alex. Hey, Alex, or questions of Alex?

DELEISSEGUES: Pretty clear.

MOSS: It makes sense.

WRISTON: No. Thanks, Alex, appreciate it.

MATTILA: Thank you very much.

WRISTON: Sorry to have to, our court reporter, reporters --

MATTILA: And I apologize, ma'am.

WRISTON: Well, I mean I hate to stop you in the -- obviously it's an emotional

moment so.

RUPLEY: Their fingers are tired.

VARTANIAN: And everything's in caps.

WRISTON: All right. Jan and Jerry Beale, are they still here?

AUDIENCE: No, they went home.

WRISTON: Okay. Lisa Remlinger.

REMLINGER: Hi, and for the record my name is Lisa Remlinger and I am the address from Capitol Way in Olympia but I'm not from the Department of Ecology, I actually live and work in Olympia for Audubon Washington at their state policy office, so I will make this short and sweet because I know we've been here a few hours now.

WRISTON: Can we get your address.

REMLINGER: Oh, sorry, yes. Yes.

WRISTON: Even though, yeah, I know it's infamous now but go ahead.

REMLINGER: I work at 1063 Capitol Way South, Suite 208, Olympia, Washington 98506.

WRISTON: Thank you.

REMLINGER: Yeah. So I just want to reiterate that Audubon Washington supports Vancouver Audubon's position and what Gretchen said at the beginning of the evening. We are asking that you please pass the wetland ordinance or the wetland working group's version of the ordinance with the Department of Ecology's comments. Audubon Washington believes in protecting and supporting working farms and forest, it's a big, big topic for us and we are focusing our efforts now in Clark County, the State office is focusing their efforts in Clark County. We are asking that you not exempt small wetlands or currently farmed wetlands. This would make it easier to convert working farms to development. And, you know, it's not all about irresponsible development but really planning for responsible development. We believe this is an opportunity for Clark County to establish a wetland ordinance that supports the motto that is there above you, Proud, Past, Promising Future. Thank you very much for your time this evening.

WRISTON: Okay. Thank you. Any questions of Lisa? Lonnie.

MOSS: Just one. You said that you support working farms and yet you're asking that

we not exempt farmed wetlands?

REMLINGER: Right.

MOSS: So would you have us tell the farmers that they have to stop farming those wetlands?

REMLINGER: No. I guess the point being is that if you removed the exemptions for the wetlands that it makes it easier to convert working farms to irresponsible or poorly planned development, so that's where we're coming from.

MOSS: I understood that point, but what should we do in the interim on those? Should we provide an exemption for farming activities or shouldn't we? What's the Audubon's position on that?

REMLINGER: I could get back to you, I'm not sure.

AUDIENCE: They're, they are exempt as farms when they get converted.

LEE: I think there has been some confusion that originally, in the current ordinance, there is something that speaks to prior converted crop lands in light of Army Corps of Engineers decisions relating to conversion and it may be that the wording of the exemption needs to reflect agricultural, existing agricultural activities as opposed to agricultural wetlands, agricultural activities on wetlands in the fields, et cetera, as opposed to -- that is something that I've gotten some phone calls on and people seem confused about the terminology. So I don't know if that responds to the question or not, but that is certainly a little wordsmithing that might help clarify the intent because the intent I believe was the agricultural activities and wetlands as opposed to the concern about if it is currently in agriculture, it automatically converts. In Clark County if you convert from an agricultural status to a different status, the full ordinance comes into play.

MOSS: Yes, I understand that.

WRISTON: Any further questions? Thank you.

REMLINGER: Thanks.

WRISTON: Kate Jackson.

JACKSON: Hi. Thank you for the opportunity to speak. My name is Kate Jackson and I'm the field director with Futurewise, we're formerly A Thousand Friends of Washington, and our address is 1617 Boylston Ave., Suite 200 in Seattle, Washington 98112. And I just wanted to first circulate, and I apologize that this doesn't reflect, well, I did it in handwritten, your new status as Chair but it still has Vaughn Lein.

WRISTON: Well, I'm not, I mean, but that's all right.

JACKSON: But if I could pass these around to you of our CAO on a CD. And so first I wanted to thank you for the opportunity to comment on the proposed wetland protections. We really appreciate the hard work that the Community Development Department has put into this and the advisory committee and the Planning Commission and so many others. We support many of the protective provisions in this proposal, but we urge you to make some refinements to protect Clark County residents and property owners from flooding and to protect the water quality of streams, rivers, lakes and drinking water in the county. And these changes and improvements are also really important to meet the high expectations of Clark County residents and property owners for a good quality of life.

So just quickly the things that we support, we support the use of the wetland rating system for Western Washington, it saves a lot of time and money to adopt that system that's already been shown to be effective and with some improvements that are outlined in the comment letter, hopefully fairly clearly, we support the proposed buffers and we also support proposed wetland mitigation ratios. I think especially in light of some of the comments of property rights issues it's important to remember that these wetlands actually do help protect people's property by providing flood storage in particular and also drinking water quality and it's been studied to show that a wetland, an acre of wetland, can range from 5 to \$51,000 in value just in terms of flood storage alone and that's value that's returned to taxpayers and to local governments.

In terms of some of the concerns that we have, we share some of those expressed earlier in terms of strengthening protections for water quality and wildlife habitat and the prevention of floods. In particular we'd love to see that no net loss of wetland function and values included in the purpose and clarify that all activities that might disturb the land, vegetation and water are covered by both the proposed regulations. And to clarify that existing -- the second thing is to clarify the existing issue with existing agricultural exemptions. We support these existing agricultural exemptions and know that it's really important that farmers be allowed to farm this land and it's been determined that farming doesn't harm it and certainly the best use of that land is to keep it in farming. The fear is that by exempting it for any use, you encourage the transition from -- that land from agricultural land to, you know, a strip mall or something like that where those functions and values aren't protected. We also want to make sure that these many reductions that have been talked about earlier where you can kind of have mitigation ratios plus a low impact development plus because the wetland gets smaller in one area you have another additional exemption, that all of these exemptions don't layer on each other to provide very few protections for that wetland and its functions and value.

So we outline it more clearly in our letter but there's just a number of ways that these exemptions can add up and really reduce the protected value. And a small thing, we're

concerned that the latest version of this wetland hearing, I was able to get a copy from Pat Lee but it's still as of this afternoon, wasn't available on the Website and it might be important to just let, let people actually have a copy of that and get it out there. In terms of why this is important, Clark County's population has increased by over 46,000 people since 2000 when the last time the County updated its regulations was and that's more than the combined 2005 totals of the population in Battle Ground, Camas, La Center, Ridgefield and Washougal all combined, so there's a lot of pressure which is an exciting thing for the county to be growing so much, on the other hand all that growth can provide an opportunity for putting the resources and the very things that people move to this county for at risk. So I think that's, that's one of the reasons why it's important to focus on this.

I think if you -- since it's late I'll trust then the bolded items throughout our comment letter are kind of the, the highlights of what we hope will get changed as you review this document. And most of all I appreciate your time. And, oh, as a side comment I want to note that we actually are working in the Legislature this year to do exactly what the gentleman from the BIAW was talking about to clarify best available science and actually have State departments write best management practices so that local governments don't have to redo best available science time and again. Unfortunately the BIAW is actually opposing that bill and so we'd love to see their support if that's actually something that they're interested in helping do. And in terms of buildable lands, it's not just providing buildable lands, it's providing those basic services and I think that's been one of the challenges too is making sure that as we grow we continue to have clean drinking water and we continue to protect the no net loss of wetland functions and values. So that's, that's our shared goal. And most of all, thank you for your time.

WRISTON: Okay. Okay. Thank you. Questions? Okay.

JACKSON: Thanks. Have a good evening.

WRISTON: Thank you. Benjamin Lawer, did I get that right? Is there a Benjamin here? Sydney Reisbick.

REISBICK: Hello. My name is Sydney Reisbick, Post Office Box 339, Ridgefield, Washington. I'm not going to go over the things that have already been said except to say I think there are reasons for the community needing wetlands. There was at the last open house a really interesting suggestion given the problems with mitigation that you were actually looking as the County and in setting up a system in which people who couldn't work out in mitigation because their land was too small or for some other reason could pay money into a fund that could then be used to buy real wetlands and that was exciting to me because it would bring money to landowners who had wetlands and bring money to wetlands along streams and functional areas that do work and not be artificial mitigations and I would like to encourage you to continue to find a way to do that.

Another thing that I'd like to say is we think of all of these things as constrictions, as restrictions, as things being put on us that are going to tie us down and I think there are people who are willing to think of buying habitat. I have a friend in Ridgefield who has a small wetland in his backyard and the people around him are all making lawns for the children to play on and he's going, well, my wetland has frogs, it has birds and it has these two-legged creatures that are there all the time and if the lawns are for the kids, why are they always over in my backyard. So maybe the wetlands has some people related functions as well as floodwater control and drinking water and the other kinds of things that they're beneficial for.

And I'd like to speak very briefly for Type IV wetlands, for seasonal wetlands, anybody that has been around the county in the last few weeks has seen puddles everywhere, those puddles are seeping into the ground, a lot of them are hydrologically associated with streams and rivers, they do have a purpose. If they've been used for agriculture you can't always see it, but they do have purpose. And I'd like finally to say, yes, I think one of the reasons that this country is strong is that we can grow our own food and the farmers really need to be productive and I think our ability to grow our own food is important as our ability to have our own energy and it's one of the reasons we have been able to remain independent and strong. Thank you.

WRISTON: Thank you, Sydney. Questions? No. Thank you. Val Alexander.

VARTANIAN: She left.

WRISTON: Did she leave. Okay. Jill Botvinik. Did I even come close? No Jill. Don Wastler.

WASTLER: I really didn't even look at that thing, you know. I think --

WRISTON: Don, I need you to state your address.

WASTLER: Don Wastler, 8811 NE 212th Avenue, Vancouver, Washington 98682.

WRISTON: Thanks, Don.

WASTLER: Actually don't mail anything there because it will come back but that's the physical address. I've lived in this county long enough to know that a developer with a good attorney and a pocket full of tricks that thing doesn't really mean much to them, but actually I have waited probably a decade to come down here for this. I brought a couple of photographs that were just taken a couple of months ago of Shanghai Creek, and you can keep them, and I think after listening tonight maybe it done me some good to stick around and hear what's going on. What's happened right there, and I grew up right there, and that creek even in the summertime in August there was always at least 18 inches of water in that creek, there was enough water for me as a

kid to pull a boat up and down through there, and then above, above us up on Little Elkhorn Mountain they clear-cut that and after they clear-cut that, then that stream just flushed down through there, caused serious erosion, that's why those trees are laying down across the creek, because of the velocity of the water washed out the roots and the trees fell down across the creek.

And you're talking about the wetlands, the wetlands, as long as they keep cutting the forest out in the mountains, the wetlands are going to keep getting bigger because that forest is the watershed, that's where the water is stored. All the time when it rains that creek had a steady flow of water. In the Winter it would raise and in the Summer it would go down but it was steady. Now when we have heavy rains it will raise, it will raise a foot and a half overnight if we have heavy rains, that was after heavy rains. If you look at the color of that water you'll see that it's brown, that's soil, that's Clark County washing away right there. After the heavy rains that brownness goes away. Now last Summer I had that water tested, it tested at 7.2, 7.27 count for E. Coli and that creek used to be clean and there isn't anything above us except houses. There's a chicken ranch up there, but I don't know if that water there has E. Coli because it was right after heavy rains. But to protect the wetlands, actually the water is filtered and regulated from the forests and it kept that creek at an even level. Like I said in the Winter it would go up and in the Summer it would go down, but it was basically the same where now because that forest isn't there and it can't be restored because there's a subdivision there now and the people that live in that subdivision and when it was being placed in there they over-fertilized their soil because they wanted a nice green lawn and then when we had heavy rains that fertilizer washed down through the creek and killed 90 percent of the aquatic life in the creek.

I called Clark County, they came out and tested the water and it tested clean, but they agreed that that's probably what it was and it just washed through and it wasn't, it wasn't in the -- in the water tests. So all the wildlife that live around there, they depend on that creek and because of the logging that's going on on that side of the county and because the forest is not there anymore, I'm certain that the overall water table has dropped and I'm glad we're not on our old hand dug well that we used to be on, we'd probably be into some E. Coli and it would probably dry up much faster than it does now.

And this wetland ordinance, I don't know what you got there, but these developers have slick attorneys and they got a pocket full of tricks and it seems like the Community Development Center keeps issuing the permits. Now where I live we're in a valley and I would say the entire area around us would be considered wetlands and what -- now I'm seeing now is heavy rains, I'm seeing geysers coming up from the mole hills that high from just the water flushing down through the mole hills underground because the trees up on the hill up north of us have been cut off because they put houses up in there now. And, yeah, the development's coming close to us and I hear people say, well, the whole thing's going to be developed all the way to Skamania County anyway and everybody's complaining about (inaudible) their

property, do what they want to, well, we're going to die some day too, that doesn't mean we got to kill ourself tomorrow.

You know, I think we should do something about these high production residential construction companies that have moved into Clark County and they pretty much own the place. It's like we don't own the property anymore, they do. And what's happened to that creek is if you saw that thing 40 years ago and see it now, you'd hang your head and cry, I'm serious, and that's why I got involved in the Camp Bonneville issue because when they start cutting timber in there, it's going to do the same thing to Lacamas Creek and the more timber that they cut in the mountains, the wetlands are going to keep getting bigger. Does that make sense? So I think there's an even balance there of where the water's coming from and where it's going to and I guess that's all I got to say.

But like I said, I've been probably a decade wanting to come down and do something and say something about this. And actually I've seen the creek, I've seen the water in that creek as black as a cup of coffee before and I called the County and I went through a whole bunch of phone numbers before I got ahold of somebody that was supposed to do something. I left a message on his answering machine, I didn't hear back from him for a week, and then when he -- I heard back from him he said I'm not the guy to talk to and gave me somebody else's phone number. And we haven't seen that black water for a while, but now it's like you see it there and when we have, we have some heavy rains, the velocity of the water that comes through there is damaging, that's soil washing away right there and there's nothing we can do about it anymore, the damage is done to that creek. They can't, they can't replace the forest there because there's a subdivision there. So thank you very much.

WRISTON: Thanks, Don. Any questions? Okay. Thanks, Don. That brings us to the end of the sign-in sheet, at least the ones I have. Anyone like to testify? Come up and I'll need your name and address, please.

FALLS: My name is Ed Falls and I live at 3316 NW 289th Street, Ridgefield. Mine's kind of brief so it won't take a lot of your time, I signed up late. It is an admirable task to save the wetlands for water quality, wildlife and future generations, I think we all agree on that. I think this committee and the supporters have overlooked a much simpler way to solve that task to preserve Clark County as some would like to have it as it once was, and that's just make an ordinance for zero population, not practical you'd probably say. Excuse me. Then the people that really want to preserve the wetlands, the streams and buffers need to pony up and pay for it rather than building ordinances to take the land from the people that it belongs to. That's all I have to say.

WRISTON: Okay. Thank you, Ed. Any questions of Ed? No. Thanks, Ed. Anyone else like to come up and testify before -- okay. Seeing none, let's go ahead and take a ten-minute break. Does that work for you? Take a ten-minute break and then we'll return it to the -- that ends our -- the public testimony portion of the -- of our hearing

tonight, so we'll return it to the Planning Commission for deliberations. Thank you all for your testimony, it was all great testimony, so we appreciate it.

(Pause in proceedings.)

WRISTON: I'd like to call the hearing back to order, please. If I could get the people in the back, hello, people in the back I need, I need people either to take their conversations outside or -- thank you. Appreciate it. We've ended the public testimony portion, bring it back to the Planning Commission for deliberations, questions, comments from staff.

LEE: I'm certainly happy to go through Exhibit 5 and talk about the changes that you see and pick up on certainly where Ecology has had a comment on specific provisions and I can at least give you the rationale of where staff is.

WRISTON: Okay. Would --

MOSS: I think that would be really helpful. I'm looking forward to that. Brent, I was going to ask Brent to do something first if you could --

DAVIS: No, that's fine.

MOSS: -- I'm not intending to put you on the spot, but it's clear to me that not everybody has an understanding of what it is that we're regulating here and how we arrive at what is a wetland and I think it would help if you'd explain to the group and the audience here what the criteria are for determining what a wetland is and how you go about that.

DAVIS: Sure. First I'd like to point out it is a fairly technical exercise. It's the wetlands have been defined legally by a field manual that was prepared by the U.S. Army Corps of Engineers and adopted by various Federal agencies back in 1987 and the manual requires that when you make a determination on-site, which is, you know, the only way to really be certain of what is and isn't a wetland, that you need to determine if three criteria are met. The first is -- well, the first one is soils. Soil, you have to have hydric soils and hydric soils are defined by specific physical and chemical properties that result from soil being exposed to water for a significant length of time. And you heard some testimony tonight about what some of that might be, the iron nodules in the soil is one, one indicator that occurs, there are several others, the color of the soil is another primary one, and we look at the soil at a depth of approximately ten inches, so that's the soil.

You also have to meet specific criteria for hydrology and that's the water component, that essentially you have to have saturation within 12 inches of the soil surface or inundation where you have water on the surface for five percent of the growing season one out of the two years. That's the criteria. Now how do you evaluate that in July.

It's we use secondary indicators that are defined in the manual. Again we look at -- look for specific soil characteristics. We look for specific physical characteristics of some of the vegetation, we also look for physical indicators on the ground such as flow patterns, debris lines from deposition and that sort of thing, and you have to -- there's a specific methodology and specific indicators you have to have in order to determine if you meet the hydrology criteria or not.

The last criteria is vegetation. The U.S. Fish and Wildlife Service has prepared a list of about 2,000 plants that are common in the north, the Pacific Northwest region, and plants that are known to occur in wetlands, that it's not a comprehensive list of all the plants in the Northwest, just the ones that are known to occur in wetlands, and a committee has essentially looked through the research and determined the probability of each of those plants to occur in a wetland and they've created sort of six buckets they put them in. They range from obligate which would be, you know, 99 percent likely to grow in wetlands to upland which is about 1 percent likely to grow on wetlands and there's a range. And you'll hear people talk about FAC or facultative and that's the middle 50/50 category, and in order to meet the vegetation criteria the dominant species in the plant community have to be FAC or wetter.

And you have to meet all three of those criteria in general in order to have a wetland. There are also special cases where if the vegetation is disturbed there are specific procedures you apply. Or if some other indicator is disturbed because of some activity that's occurred on the site or some unusual natural event, and then there are some other considerations for unique situations so.

DELEISSEGUES: Just a question on the plants. Did they also rule out the fact that these plants don't occur in non-wetland areas?

DAVIS: Well, if it's not on the list it's presumed not to occur in wetlands until such time as somebody submits it to the Fish and Wildlife Service or --

DELEISSEGUES: No, I mean the plants that are on the list that do occur in wetlands, do they also occur in non-wetlands?

DAVIS: Oh, certainly. And that gets back to the probability scale. For instance a common example just to kind of put this in perspective for you, Himalayan blackberry, a common invasive species is considered facultative up which means that about 66 percent of the time it's found in uplands so that means about 33 percent of the time it's found in wetlands, but we commonly find it in wetlands because it's so pervasive throughout the county. So, you know, it -- basically we're looking at that indicator status and if it's facultative, if it's, you know, if it's 50/50 or more likely to grow in wetlands, then it's considered a wetland plant.

RUPLEY: Let's take the example that was used earlier tonight in the testimony in terms of development disturbing and creating more wetlands, how would you respond

to that in terms of would that be an unusual natural circumstance or does -- is that how a wetland is created?

DAVIS: Well, the provisions for its abnormal circumstances in the delineation manual really are designed for sort of acute sort of events, you know, somebody went out and you --

RUPLEY: Development's not acute.

DAVIS: You go out to delineate a wetland and somebody plowed it the week before, that sort of thing. Things that occur over a much longer time scale, much harder to define as an external influence are essentially existing conditions.

RUPLEY: Okay. But I mean I'm asking the question in terms of where you might have existing vegetation and natural and then development then would, and I guess I'm thinking in terms of all of a sudden my land might become a wetland because of something further up the food chain or the -- and is that -- does that happen a lot with the development that's going on?

DAVIS: Well, certainly the -- you can see changes in the hydrology and very quickly. Oftentimes a plant community responds a little more slowly, but over the course of four or five years you can see a significant shift that could, you know, change the vegetation criteria. Soils generally take quite a bit longer to form, but there are, you know, there are indicators in the soils that can appear rather quickly that are related to the plants. So, you know, it's really hard to document something that's changing rapidly and to -- particularly to convince a regulator that it's not wetland, that it, you know, unless you clearly have evidence that it wasn't prior to and you can point to what caused it to get wetter, that's the challenge.

MOSS: I think Jada's question is kind of illustrates what I was hearing from the audience too and that that's a little confusion. And there was some talk about, well, the upstream development, you know, is going to increase the wetlands downstream or the cutting of timber up there on the hillside, you know, is causing more water to come down and that's going to increase the wetlands, well, you know, I want to -- I think we need to distinguish between flooding and wetlands, those made --

DAVIS: Yeah, because we actually see a lot of wetlands --

MOSS: -- those may occur at the same time but often don't. Anything that's in within the floodplain isn't necessarily a wetland.

DAVIS: That's correct. And we also see wetlands that dry up as a result of development.

MOSS: Yes.

DAVIS: Well, actually we have a couple of cases we're reviewing right now where the wetlands have clearly gone away over the last five or ten years. They were set aside when a development came in and they no longer meet the criteria.

WRISTON: Any further questions? Pat, go ahead. Lonnie, did you have something?

MOSS: No, I wanted to hear what Pat had to say.

WRISTON: Pat, why don't you go ahead.

VARTANIAN: Well, can I --

WRISTON: George, yeah.

VARTANIAN: Can I ask just I think two questions, hopefully these are not too long before you get into your dissertation which will probably take longer.

LEE: A soliloquy, not a dissertation.

VARTANIAN: Yeah, right. Okay. Okay. Now I forgot what I was going to say.

WRISTON: Go ahead, George.

VARTANIAN: When in the proposed Code, and I think in the Code established before, all reasonable uses, you know, nothing in the chapter will prevent reasonable uses from occurring, how far does that stretch? What does that mean?

LEE: That's a comment that really the fundamental principle that that set of reasonable use exceptions is trying to address is the issue of, you know, when you -- a public entity crosses the line towards a taking situation, and people may disagree where that is, but that is why those exceptions are largely in there to -- and they're with some specific example so that at least staff has guidance when we think that's the situation. Unfortunately there is no universal accepted quantified statement of where that is so typically it's litigated on a case-by-case basis.

VARTANIAN: That's what I was afraid of, yeah.

LEE: Yes. And I don't -- if Bronson wants to chip in here at all on that or nod or just nod your head saying I did great.

POTTER: You did great.

VARTANIAN: No, I mean that's what I was trying to get to. Sooner or later it always becomes a litigious issue, you know, somebody's going to say this is reasonable and

the other guy's going to say, no, it's not and we go to court, and I was just hoping against hope that there may be some way around that like a committee that both parties or a negotiator or an arbitrator or something like that. Okay.

On the matter, and we talked about this a little bit, off-site buffers, I really have a problem with, you know, how is something a buffer when it's not attached to the wetland that it's supposed to be buffering for and how far away can you get and still be called an off-site buffer?

LEE: An off-site, and I think you need to make a distinction, are we talking about a functionally isolated buffer?

VARTANIAN: Okay.

LEE: There is provision in both the existing and the proposed ordinance that where there is evidence where the connection of a buffer to the wetland, if you were just to measure sort of the distances set aside for buffers, where that connection has been separated by a road or some change in grade or some situation like that, then it in fact is not associated, it's not performing the functions of protecting the wetland, and therefore that is one of the criteria that would be looked at in establishing what the appropriate buffer is for that particular situation. Presumably it would, you know, cut off at the road or whatever the situation might be on that particular case.

VARTANIAN: Okay. Well, okay, I guess it's a difficult question to ask or answer because, you know, what if you got two roads, three roads --

LEE: I don't know if Brent, Brent wants to --

VARTANIAN: I, you know, it's just I don't know --

LEE: -- articulate better than I can.

VARTANIAN: -- when does it stop becoming the buffer for that wetland when something else has gotten in between it?

DAVIS: The provision for functional isolation is essentially the same as the provision in the current ordinance and the way it's applied is --

VARTANIAN: Oh, yeah, I'm not saying that the Code does better or worse than the old Code, I'm just when do you stop saying that?

DAVIS: Just so I can tell you how we apply the language currently, I don't foresee that that's going to change. If there's an existing structure or a road in the buffer, and generally we look at graveled roads or paved roads, not so much dirt tracks, we draw the line at the edge of the road that's closest to the wetland. Anything beyond that is

not functionally connected to the wetland because it's separated by that existing development. That also would apply to a significant vertical separation like a cliff or a very, very steep slope where -- or a situation where maybe you have a berm and the, you know, from the downhill side of the berm everything's draining away from the wetland and the function of the buffer is to provide water quality protection, you know, that might be considered functionally isolated. So anything functionally isolated would not be regulated.

VARTANIAN: Oh, okay, I guess I misread that. Okay. Okay. Thank you.

WRISTON: Pat.

VARTANIAN: Yeah, thanks.

LEE: Okay. I'll start with my soliloquy here. There's been a lot of discussion about the deletion of Page 1, Line 10, I will at least explain the rationale why that edit was made.

MOSS: And you're working from Exhibit 5?

LEE: Exhibit 5, yes, I'm sorry, I'm working from Exhibit 5. The statutory language is what the revision is in 1 so we are now quoting what the statutory language is because it specifically addresses that the purpose is to include best available science to protect the functions and values we felt it had already been said and there was no need to keep Number 2, and Number 1 is the statutory language as I said. If you go down to the applicability section, and I think I was privileged to be in the conversation with John and Rich when they were talking about this one listening, and I think the best way to describe the difference in philosophy was whether it be in the applicability or whether it be in the exemption it was unlikely that we were going to hit every single possible example on either side, so the one philosophy of a more wide applicability clause is as John indicated trying to err on the side of if a situation comes up that wasn't explicitly contemplated, and he mentioned the informal motocross track as the example, the philosophy that John advocated for would indicate that it was probably we would be in a stronger position as a County to regulate that use.

On the other side, Rich's concerns were that when the applicability clause is so encompassing it may be erring, his preference is to err on the side of a more narrow interpretation. And part of that is ease of administration and part of that is just a desire to narrow the County's exposure in an uncertain situation. So those are the two philosophies that kind of depict that discussion. And some of the -- I mean there's been various suggested language submitted by some of the people that testified this evening and it's really a policy call on the part of the Planning Commission on which way they'd like to go on that.

MOSS: Pat, if unless I'm reading this wrong, without triggers like this wouldn't existing impacts on the wetland then be subject to this even though those impacts may have

occurred 100 years ago? For example a road crossing the wetland that was built in 1950, if without a triggering application, without some kind of trigger like this, if we did what Mr. Karpinski had suggested and just threw out the triggers or the applicability section, then wouldn't the County be in a position of saying, hey, that road is subject to the wetland ordinance and needs to be mitigated? I mean that's a stretch but --

LEE: Yeah, I would say that's a stretch.

MOSS: -- don't you have to have a trigger in order to avoid that?

LEE: But I think that does depict the philosophy, you know, if you spit in a wetland are you thereby possibly degrading the wetland and should you be regulated from doing that, you know, I mean that's kind of the different philosophy that is depicted and the prior I will say what was in the working group is pretty much consistent with what the model ordinance was at the State and there was at least some discomfort on the part of our legal counsel that it might be too encompassing and leave the County too exposed in some circumstances. But again, it's -- as Rich would say it's -- it wasn't an issue to go to the mat for, but I wanted to describe the different philosophies as best I could.

MOSS: Well, it seems to me that this, we've run into this with other ordinances, and the road standards would be a good example of that, if you have standards for roads and you don't have the trigger for those standards, then all deficient roads should be brought up to those standards. You know, that's why there are triggers in the road standards. It's when you're constructing a new road it has to be brought up to those standards, that doesn't mean that every old road in the county also has to be brought up to those standards, and yet I think we've got a very similar situation here, that's the way I'm looking at it, without a trigger then you would have to go back and remove all of the obstacles that have been placed in the wetlands before unless there was a specific exemption. You know, there's an exemption for a residence in a wetland on a parcel, but there isn't an exemption for a store and I know that there are some of those in the county. So what would you do, remove the stores?

LEE: I think, you know, certainly the way staff looks at existing situations like that it would be when you're -- we're not necessarily forcing a change to what that existing status is, but if a change were to be proposed, then it would, yeah, it would come under the applicability provisions of the ordinance, but I think that would be the case in the current ordinance or in the proposed ordinance.

VARTANIAN: I would assume you could grandfather whatever's in place at the time --

MOSS: Not without an ordinance that allows that.

VARTANIAN: Well, no, but you say, yeah, I mean you just stipulate in the ordinance that says this is going to be a wetland and anything that's there now is okay and at

some point if something changes, ownership changes, you want to double the site, that's different.

MOSS: That's one way, this trigger is the other way. And that's that if you get into an activity that triggers the wetland ordinance, then this applies.

LEE: Yes.

MOSS: If you don't, then it doesn't. If you don't apply for a building permit, you're okay.

LEE: And you have the listed building or the list of the various development applications we have, I will say that under 2 on Page 1 and 2 the cleanup that you see there is basically just to reflect what the procedures are that we have with the one exception I think Number n on Page 2, zoning code amendment, again the model ordinance had incorporated that, we feel that really to talk about wetland delineation you're not going to do that until you get down to a site design level, not at the zoning level, so that is why that one is out, but the rest are just cleanup to reflect those development processes that we have in place and we specifically reference the forest practices that the County is responsible for as opposed to what the State is responsible for.

If we go on to the reasonable use exceptions, and there's been a lot of discussion and I'd like to point out the issues that DOE and some of the speakers this evening talked about and at least articulate staff's thoughts on it, if you go to Line 20, a placement of a single-family residence on an otherwise legally buildable lot of record --

HOLLEY: Slow down, please.

LEE: Oh, I'm sorry. And I was doing so good earlier, wasn't I?

VARTANIAN: She hasn't called me out once tonight.

WRISTON: She's been close. Go ahead.

LEE: We feel that, you know, to expand a house by not to exceed 25 percent of the building footprint or to go from replacement of a single wide to a mobile wide are reasonable allowances and we recognize and we articulate hopefully more clearly than in the original when you get up to Line 16 that under reasonable use exceptions, mitigation for unavoidable adverse impacts will be required, and that is different from exemptions, exemptions are basically exempt from regulation under the ordinance, so it's a clear distinction to be made between those two different processes. So we felt that with the mitigation requirements in place that these were reasonable activities to allow.

If you go to Line 33.b, and I think George's question already hit on that, there is unfortunately no clear definition of what is a reasonable use, that was one of DOE's comments, which is reasonable use and unfortunately we are instead of best available science and best available litigation on that one.

MOSS: Pat, if we could back up just for a minute I do have a comment on the -- we have kind of a little bit of a ludicrous situation with this one that you mentioned up here before at Line 20 and down and that's that somebody's entitled to build a home right now, but having built that home they can only expand it by 25 percent, but if they want to tear it down they can build one twice as big again on that lot and it seems to me that that's kind of a ludicrous situation that I'm wondering why we impose this 25 percent limit when we would allow that home to be burned, we'd allow somebody to build twice as big a home, there's no limitation on the size of the home that you can build as an initial home. Anyway, just an editorial comment, I think it needs to be fixed.

LEE: Okay. And I, you know, I'd have to go back to the Code myself to see where a rebuild is, you know, are you entitled up to twice the footprint or not, twice the size on the same footprint.

MOSS: There's no language in here.

VARTANIAN: Doesn't the Code say that if a single wide is removed, you can put in something twice as big as opposed to --

MOSS: That's a single wide mobile.

VARTANIAN: Yeah, as opposed to --

MOSS: I'm talking about a stick built home. If you wanted to tear a home --

VARTANIAN: Well, does it say that?

MOSS: -- down and start over again --

VARTANINA: Does it say that?

MOSS: -- you could build one any size you wanted.

WRISTON: You guys can't talk over each other.

MOSS: Sorry.

VARTANIAN: I'm sorry. My fault.

WRISTON: Just one at a time.

VARTANIAN: Does it say a stick built home can't be -- you can build a stick built home twice as big?

MOSS: No, it says that you can build a home on a lot of record and there are no stipulations as to the size of that home, there's no restriction on the size.

LEE: That may be, but if a home were built, then say it was destroyed by fire, it could be rebuilt but I do believe there would be a limitation on --

MOSS: I'm not sure where that comes from.

DAVIS: It would be evaluated on a case-by-case basis under the reasonable use provision in terms of, you know, what the County's willing to defend as --

MOSS: Here's my point though, once the home is gone it's gone, okay, then that lot is entitled to build another home --

LEE: Yes.

MOSS: -- and there's no restriction on the size.

LEE: I can't, you know, I can't give a definitive yes or no answer but I --

MOSS: I don't want to belabor that, it just seems like odd language there.

LEE: I understand, and that's certainly within the Planning Commission's venue to suggest a change in the wording if that's what you feel is appropriate.

WRISTON: Well, depending upon where we go that may be one for you to maybe talk to Bronson or Rich and see if that's true, because I know exactly what Lonnie is saying, I'm surprised he's pointing that out, but because --

MOSS: I don't live in a wetland.

POTTER: Because there would be no restriction on the expansion.

WRISTON: You're just closing a loophole.

LEE: If you go to Page 3, Line 5, "the standard of this chapter will not be used to deny or reduce the number of lots of a proposed rural land division under applicable zoning," this was questioned by a number of people including DOE, that is in fact I believe a carryover from the current ordinance. Is that the case?

MOSS: From the habitat ordinance.

LEE: From the habitat ordinance, okay. And again, when you're dealing with short plats in the rural area, there is generally some flexibility on where you can locate those residences so we think this is -- and there are such things as cluster provisions, et cetera, that can help in that regard to provide some flexibility to avoid wetlands to the extent possible. So again, we as staff feel comfortable with that particular exemption or reasonable use provision.

MOSS: As a suggestion, the habitat ordinance also says that you will use the cluster ordinance in order to avoid the impacts where possible, you might want to insert that in the wetlands ordinance here too, that does seem to make some sense. If you've got upland areas and you can use a cluster rather than a straight five-acre land division, you probably ought to be doing that.

DELEISSEGUES: Does that apply to subdivisions that were approved before 1994 where they may only be one-acre lots? I mean is there any differentiation --

MOSS: No, this is only new subdivisions.

DELEISSEGUES: Just the new subdivisions?

LEE: Yeah, this would be applicable to new subdivisions, yes.

DELEISSEGUES: Short plats are going to be nine?

LEE: There, yeah, there is a -- we I believe will be proposing a biannual code that would bring that up to nine, yeah, from the current five which is consistent with what State subdivision law allows. If we then go on to -- well, let me go back to some of these exemptions on Page 4 just to reiterate, f and g on 18 and 21, Line 18 and 21, those are from the utility group. I believe that those exemptions together with the programmatic permit provisions later on in the ordinance also respond to the comments from the Washington Department of Transportation. The others as I said are exemptions that are in the habitat ordinance, they seem to be -- that have been added, and they seem to be consistent at least with trying to make those two to the extent you can be fairly consistent in their interpretation.

There has been a lot of discussion on m, again that is certainly a policy choice that you have before you and it may stem, you know, from our perspective at least it is as a reasonable de minimis standard to take a look at. If we go to Page 5, Line 4, and to get back to one of Jada's questions, where you see the -- or in bold, that is the policy areas where the working group could not come together. They had suggested a choice in the range. When we went to the Board of Commissioners in work session last week, they felt that the one-tenth of an acre upper threshold for exemption was reasonable. And it's for two reasons; one is related to these photographs that I handed out. This is not an atypical distribution of wetlands that you may see across some

agricultural lands for example, it also gets back to the next exemption we'll talk about, the existing agricultural wetlands, and, secondly, at a tenth of an acre in size you are likely to trigger the need to apply to the Army Corps of Engineers for a permit. So it seemed a reasonable cutoff so there's a clear separation between what may be governed under the County ordinance and what may be governed under the Corps requirements.

RUPLEY: Say that one more time. When is it --

LEE: The Corps of Engineers' threshold for submitting an application to them for review is one-tenth of an acre of wetland fill or 43, 4,350 feet roughly, and that's why that was the figure that the Board of Commissioners suggested we present at last week's work session.

Agricultural activities, I will say, and because there has been confusion, at least it was the intent of staff and we may not have articulated clearly not to exempt wetlands that are farm lands if they are converted to other lands; however, if there is a wetland on which existing agricultural activities are being carried out at the adoption of this ordinance, given the distribution of wetlands, given the need to balance the State goals in terms of preserving agricultural activities and critical areas, this is an exemption that we feel comfortable with. And I will point out the one loose end here is that agricultural activities starting on Line 18 the last sentence, agricultural activities in riparian wetlands are regulated through Clark County Code Chapter 40.440, habitat conservation. The citizens group that is trying to address this issue in terms of regulating existing agricultural activities under the habitat ordinance which was the specific subject of some of the court cases that Bronson reviewed at the beginning of the meeting is still working on this issue, they have another meeting next week, and seeing as the habitat ordinance is in effect along riparian corridors it made sense again to try and let that issue be worked through that and to allow the regulation in riparian areas of existing agricultural activities to proceed consistent in both the habitat ordinance and in the wetlands ordinance and kind of the forum is this other group and they'll be working their way through the wetlands ordinance until the final action on what the wording is. So that's kind of the history of that. But I would consider maybe changing --

WRISTON: Hold on, Pat, while she changes.

LEE: What I would suggest, if you concur with at least what the intent was of staff in trying to articulate this exemption is, one, you might want to relocate it to under the prior section, not under the exempted wetlands section to clarify it and maybe use the term at the starting instead of existing agricultural wetlands, existing agricultural activities, and that might clarify some of the intent. Again, certainly it's your purview which way you want to go on that, but the intent was to exempt ongoing agricultural activities, not to exempt wetlands entirely that are currently under ag use. And if -- and in our current ordinances if you convert from an ag use to a, in this ordinance to a

different use, the full buffer widths, et cetera, would come into play so.

MOSS: Part of the problem with that that structurally grammatically is that it comes under 2 which is titled "exempted wetlands."

LEE: Yes. Yes.

MOSS: Maybe we ought to change that too.

LEE: Or we could relocate. I mean we are talking about exempted wetlands basically under the small wetland category, but I think this is maybe best put in like back on Page 4 as an exempt activity, again, if that's consistent with the choice you wish to make.

MOSS: We could maybe title this wetlands in use for existing agricultural activities or something like that too if you wanted to make it all wetlands.

LEE: Okay. Go on to Page 6, just the change there is reflected on this other attachment that I -- well, it's in response to a DOE comment. I had originally mis-cited the reference and they made me cite the correct reference which I appreciated. The one policy issue that the working group was not able to come together on was the trailer or as revised by Ecology. It is clearly our Prosecuting Attorney's position that we do not want sort of to either get the County or property owner caught in this what regulations apply sort of Catch-22, so the process that they advised us to use, you cite a specific document that you're referring to and if there's a change to a State law or a Federal law or a guidance document, then we go through our own legislative process to change that if we wish to do so and it minimizes this Catch-22 that can occur. Okay.

If you go to Page 11, the land use intensity matrix, under the low category the Department of Ecology's comment was that no residential should be considered low, they suggested that the density at lower than one unit per five acres should be in the moderate category, we disagree with this, we feel that through prior hearings board decisions the accepted rural development standard for residential is one unit per five acres and we feel this is a low intensity as opposed to a moderate intensity use. And the other issue we've discussed, and it's not a major issue but again DOE flagged it, under the moderate they felt that golf fairways should be in the high category along with greens and tees and structures and not a big issue, but we felt that and with discussion among the technical committee that fairways were actually somewhat different both in kind of the location of where they are as well as in relation to roughs, et cetera, and in terms of the amount of grooming that they undergo.

VARTANIAN: This is, I'm sorry, the citizens group working on this agreed with what we have in front of us right now, just the DOE took exception to it?

LEE: Yes. Yeah. Yeah, the DOE took exception to it and many speakers tonight also

called those issues out. The next page, 12, Number 7, Line 7, and I think we did have some testimony, I believe John testified about this earlier, the current ordinance allows you to rate wetlands to some extent on the individual components within a wetland, there might be some areas of a contiguous wetland that are higher quality, some that are lower quality and you can differentiate in the current ordinance. I think that the proposed wetland rating system that DOE suggests in their guidance really forces you to look in a more generalized fashion at wetlands as an entire unit and it is staff's opinion at least in wetlands where habitat rating scores are low that it is reasonable that the additional buffer sizes are not required, that you could make a distinction again and because you can get generalized over a large area. In some of the case studies, I think Case Studies 6 for example, it showed that what was a Category II, Category IV combination when generalized as a whole actually dropped to an overall Category III, so it will have some effect on how things play out on the ground.

The next area that I would call your attention to is Line 24, maximum buffer area, there has been lots of discussion about that. Depending on the configuration of wetland, if you have a long narrow wetland and if you have a very low (inaudible) wetland, if you do the concentric buffers around them, you can be chewing up an awful lot of property so we feel that this provision which is a carryover from the current ordinance that we will not exceed two times the total wetland area and buffer area on a property, we feel it's a reasonable provision.

The final policy call the working group couldn't agree on, and I'll go to Page 13, Line 20, our current process is where we use the concept of development envelopes, and for example if you have a rural short plat where the building envelopes of the individual structures are clearly outside of a wetland, we do not feel there would be necessarily a need to go through the complete wetland delineation process, and I think we had some testimony consistent with that this evening, and we typically identify that development envelopes have been used in the wetland permit aspect by indicating, so as a note on the plat. Some members of the committee thought that if you actually had a survey line on the plat indicating where those envelopes are, there would be better enforcement and that that may be true, but it also causes a cost and possibly a time burden to the property owner so we felt that the keeping with the current process of a note is sufficient.

Go to Page 15, Line 27. This refers to the responsible official may determine that proposed measures other than those specifically listed above and basically those are a variety of measures, design measures that could be pursued to reduce buffer widths, we recognize it's not necessarily an exhaustive list and we also recognize that really when you get down to wetland delineation and wetland protection issues, you're really looking at things on a case-by-case basis. I will say that our working group felt very strongly that having the flexibility for Brent to go out and work with Kent if there is a wetlands issue and to kind of tailor whatever program would be proposed in the permit to the site conditions made a lot of sense, they felt that that was just a practical means of collaborating on getting together a permit that both protects the wetlands and

provides the needed flexibility for the development to proceed, so they were very strongly opposed to being totally prescriptive in the standards and we agree with that.

The next one, another lots of discussion, I think this is an area where there may also be some confusion the minimum buffer and it specifically responding to the issues of in the case of buffer averaging and buffer reduction via the above provisions that provides some flexibility. "The minimum buffer width at any point shall not be less than the low intensity water quality buffer widths contained in Table 40.450.030," I think some of the testimony, at least my interpretation of some of the testimony, feels that we will be defaulting to that buffer entirely and that was the fear. Again, that is my interpretation of some of the testimony. I think the intent is clearly when you're buffer averaging or you're otherwise proceeding with some sort of buffer reduction strategies based on better design, that in those pinch points the minimum buffer will be the water quality buffers in the table, the minimum one for Class IV being 25 feet. So there may be some misunderstanding of the intent, but the intent is not to default that for the entire buffer width, it is to talk about those areas where you may be narrowing because of the design measures or because of the practice of buffer averaging.

MOSS: So the effect of this would be if you have a low intensity use, which all rural uses are, then you don't get any, there's no way to buffer average?

LEE: No, you can. Well, is there?

DAVIS: If you're strictly dealing with water quality function that's correct because you're already at the minimum buffers. Just like the current ordinance is, the buffer's automatically reduced 50 percent which is the maximum reduction that's allowed so there is no additional flexibility. In this case if you are in the rural area and you have habitat function, you could still buffer average because the habitat buffer is going to be larger than the water quality buffer.

MOSS: Okay. But you could never go below 25 feet though?

DAVIS: On a Category IV.

MOSS: And I guess that's the case right now?

DAVIS: Yeah.

LEE: That where you're narrowing that buffer down, yeah. I believe DOE suggested never less than 35 feet in their comment.

Next issue, and actually this is captured in a couple of places, if we go to the bottom of the page Number 4 and you go -- well, again, DOE voiced concern about stormwater facilities. I would point out that this provision talks about stormwater facilities with low habitat function so it is not an across the board activity in all wetlands, it's only those of

low habitat value that stormwater facilities would be allowed in. And that comment is also picked up when you get to the wetland permit on Page 22, Line 33. So on Page 16 I believe we're talking about the buffer and on Page 22 we're talking about the wetland itself it appears. And I would say that the intent, yeah, we go to Page 16, Line 30, the same issue, it's mirrored again and on Page 22, Line 40, the road and utility crossings, we believe that they should be allowed where the conditions are met as described in a and b below. DOE again was concerned of encroaching into the buffer and the wetland for these types of facilities and we feel they are reasonable things to allow to proceed under the circumstances outlined in the ordinance.

And if you go to Page 25, Line 14, DOE had suggested that for forested wetlands and for high risk mitigation projects that the monitoring period should be at least ten years, we feel that the wording authorizes us on a case-by-case basis to extend the five years to whatever we think is necessary, so we don't think a change in the ordinance is needed to respond to that comment.

If we go to Page 27 next, Line 35, we do have some suggested additional language to Number 3 there, "programmatic permit applications subject to Type II review shall not be subject to the distribution requirements of Clark County Code 40.510.020.E.2.a," that provision is the noticing of surrounding property owners. If you're dealing with a programmatic permit for an entire utility corridor, you're talking about a major notification issue in that case; however, it is suggested that we add the following to the end of Line 36, new sentence, "within 14 calendar days after the date of an application is accepted as fully complete, the County shall publish in the newspaper of general circulation a summary of the notice including the date, time and manner of making comments, the nature and location of the proposal, and instructions for obtaining further information," so instead of the individual noticing we are making sure that there is some sort of notification through publishing an ad in the paper and we feel that that may be a more pragmatic approach given the geographic area that some of these programmatic permits could conceivably involve.

VARTANIAN: Would you consider just a little bit of a caveat on that like if it's going to go through or within 300 feet of whatever it is of subdivisions or what have you to notify those people? I mean I could see how a utility line going through countryside where it's very sparsely populated, you know, may be a problem, but if it's coming through a fairly densely populated area. My problem is that I'm having trouble just -- I can understand what you're saying, but there's a bit of a distinction then between notifying neighbors of a development that's going to come as opposed to, you know, wetlands impact. You know, notification to me is notification, I realize that there's a distinction.

LEE: The kind of the thrust of -- first let me answer the question. I believe that you certainly have the flexibility to suggest changes in the wording, this is the wording that was discussed by the utility group and however that that, you know, that is certainly their input into the process and I'm happy they worked so hard to get the information together that they did. That said, a programmatic permit the way it's laid out here is

typically for routine maintenance and operations of what might be considered existing utilities and so folks will know that the utility corridor is there, folks will know that periodically trees will have to be trimmed back from the power wires, whatever the situation is. So I'm not saying it can't be done, I'm just providing the context of the discussion.

VARTANIAN: Well, doesn't that go back to one of the exemptions on Page 4 if you will?

LEE: Well, there's -- actually we should talk about programmatic permits a little too because we received a lot of testimony on --

DELEISSEGUES: Excuse me just a minute, are you on Page 31 now?

LEE: Yes, I am on Page 31.

DELEISSEGUES: Thank you.

LEE: I'm sorry, I moved on to the programmatic permit section because I did want to talk a little bit about that. Some of the -- I think the programmatic permit incorporated in that is, you know, a more extensive process that could be applied and certainly as new corridors are developed I believe they will fall under the normal permitting process. Once they are in place, then the programmatic permit presents itself as maybe a streamlining for the utilities so that they don't have to come in for an individual site permit each time they need to do maintenance along a certain corridor, that's the intent.

But I did want to get down to Page 31, Line 43. There's been a lot of testimony tonight about removing the phrase "best management practices." I would point out that we talk about the maintenance practice proposed to be used here, and let's see, we just go down the list of submittal requirements, the programmatic report, we have what are the restoration measures, we have the mitigation measures and assurances, annual reporting that documents compliance, go on to the next page, reporting to the responsible official of any specific wetland or wetland buffer degradation resulting from maintenance activities when the degradation occurs in a timely manner, responding to any department requests for information about specific work or projects, procedures for reporting and/or addressing activities outside of the scope of the approved permit and training all employees, contractors and individuals under the supervision the applicant who are involved in permitted work, and I really think that that training provision together with the rest of the requirements in here get at that best management practices concept that people have objected to.

So again, I don't think there is an intent not to use best management practices, the way the ordinance is laid out is different than using that term, but I do believe particularly when you include the reporting and training requirements you're talking about instituting best management practices.

VARTANIAN: How about best management practices including the following, including but not limited to the following? I mean if it's --

LEE: Well, I would --

VARTANIAN: -- if it's just a concern -- sorry.

LEE: I would suggest that they would be presenting the typical methods that they would be using in the programmatic permit application.

VARTANIAN: Yeah. No, I'm just thinking if people are hung up on best management as opposed to some other language, okay.

LEE: And I just wanted to say the intent was not to discard best management practices, something fundamental of what we want to see happen, it's just the way the ordinance is laid out. And that really addresses I think most of the DOE comments, at least staff's position on why we at times vary from what the DOE guidance and their comments have suggested. So any further comments or questions?

WRISTON: Thanks, Pat. No, that was good and useful to hear staff's positions on that. Where do you guys want to go from here? We're at 11:10.

LEE: And the lights haven't gone out.

WRISTON: And the lights haven't gone out.

RUPLEY: But the heat is off.

WRISTON: The heat went off a long time ago.

MOSS: And I'm not even through asking questions here. I don't know that we're going to be able to complete deliberations here.

DELEISSEGUES: I don't think so.

MOSS: I don't think we can do a fair job of it.

DELEISSEGUES: I don't either.

ALLEN: And it also appears that not everybody had the Exhibit 5, and then there was a lot of testimony that was presented today that had some good points in it as well that probably should be considered prior to making any deliberation.

DELEISSEGUES: Plus the fact that there are a number of handouts delivered to us

that no way, you know, we could read them.

WRISTON: Okay. Pat, I know you're on a timeline.

RUPLEY: Ever since we've known Pat he's on a timeline.

WRISTON: Since we've known Pat he's on a timeline.

LEE: Let me if I may with the permission of the Chair.

WRISTON: Yeah, go ahead.

LEE: At least one of the highlights that I haven't talked about much, I did mention the go to the amendatory codes, if the proposed ordinance were adopted in something as its proposed form, we would suggest that should trigger some of these amendatory changes to other sections of the Code to carry through the intent, so I wanted to go through those.

Isolated wetlands. This was a definition that was discussed in quite a bit of detail by the technical group and seemed reasonable to the working group, so that would be a potential change to the definition section. The definition of wetlands, this is the DOE definition that they requested that we use explicitly and so we've incorporated that as a potential amendatory change. Also in the definition section our current Code references the Corps of Engineers and it should be the Washington State Wetlands Identification and Delineation Manual, so that is another amendatory Code changes.

Categorical exemptions. This is relating to SEPA as it relates to wetlands permits and if you go to Page 3 the changes that we suggest that exemptions listed in 40.450.010(C), it's the wetlands section, should be exempt from SEPA. Other exemptions as specified in 40.570.090(E), which is the next page of the SEPA guidelines, do not apply unless authorized by a Type I wetland permit and we are suggesting this because currently there is no opportunity for Type I wetland permit in the current ordinance, so the Type I wetland permit is an effort for us to at least in some limited circumstance make the process less onerous for folks and we feel that tying that back to the SEPA process makes sense, and we actually feel it is clearly within the purview of the categorical exemptions that are allowed at the State level and the State Environmental Policy Act.

If we go to Page 5, because we have two new potential permit types we need to cover that in our fee schedule for applications and the changes are if you go to Page 8 under S near the top of the page we are adding programmatic habitat and wetlands permits and if you have an individual Type I review, an individual Type II review, reauthorization of a programmatic permit, a combined habitat wetland Type I, a combined habitat wetland Type II and a combined reauthorization review, so it's just covering the permit types that we're introducing through the proposed ordinance. And

consistent, if you go to Page 10, we have wetland permit Type I, wetland permit Type II and this is just tracking back to the permit processes that we've set out in the ordinance.

I would also note on Number 12, and this is just to prevent confusion, this is a footnote that has been added to both the -- to the programmatic section saying that programmatic habitat and wetland permits are addressed in Section 2.S. of this table just because we thought there might be some confusion if someone goes to Page 10 and says wetland permit and the schedule is different than for programmatic permits, so it's just trying to coordinate those.

DELEISSEGUES: Was that all one sentence?

LEE: And finally we need to address the release of the performance assurances for carrying out the mitigation project and for maintaining the mitigation project and that is identified on Page 14. So again, these are amendatory Code changes that we would suggest should go along with the wetlands ordinance if those provisions of the wetland ordinance are moved as proposed.

VARTANIAN: Pat, where's -- I'm sorry, on Page 11 you reference Section 2.S. of this table?

LEE: No, not --

VARTANIAN: On Page 11 caption 12.

LEE: Page 8, Page 8, S, that is the fee schedule.

WRISTON: Yes, this is Section 2.S. though, there is an S but I didn't see the --

LEE: Yeah, but it's on the prior page so a couple of pages prior.

WRISTON: Section 2, yeah, okay, way up there, there it is. Okay.

VARTANIAN: Sorry.

LEE: That's a long table.

VARTANIAN: Yeah, and I'm getting old.

LEE: Okay, I won't talk about Code language anymore.

WRISTON: No, I appreciate, that was helpful. You know, that was handed out to us and I think we were all wondering what --

LEE: What the heck is it.

WRISTON: All right. Well, it sounds like everyone wants to drop back and think about it a little bit and then come back and deliberate some more and that will hopefully give Ron a chance to review what he missed and participate as well. So, Sonja, what are our options in terms of -- I know we've got full --

WISER: Most of the hearing room here is pretty booked. City Hall is booked.

WRISTON: Are we allowed there anymore?

WISER: Well, yes, we are.

MOSS: That's foreign territory.

WISER: The next available date at City Hall is March 30th. February 23rd is booked in both places. March 2nd is booked. March 9th is booked. Then our regular hearing is March 16th.

WRISTON: Right.

WISER: We could get into City Hall on March 23rd or March 30th.

WRISTON: What's --

LEE: My preference --

WRISTON: The 23rd?

LEE: -- would be -- actually, no, my preference would be to continue this item to the next regular meeting --

WISER: March 16th.

LEE: -- and take it first on the agenda.

EULER: We got a full agenda.

DELEISSEGUES: Push that stuff over.

LEE: Well, we had a full agenda tonight too.

AUDIENCE: You're not going to be opening up to public discussion anymore so there's no need to have it all.

WRISTON: No. No. I think we said -- I think we still need to have a -- I guess that's a good question but I think --

WISER: We need a date continued or we'd have to re-advertise it.

WRISTON: Right. No, he's just suggesting that. I mean we need to be in one of those halls, I mean City Hall or here, and I guess we don't really have --

LEE: Have you tried the motor vehicle licensing?

WISER: No, but CVTV, you know, it would be an extra strain on them because of the setup situation. I can try.

LEE: I would suggest that might be a good thing.

WISER: For a different -- for when, in February?

LEE: Well, I think that depends on when we could -- when we get a quorum.

WRISTON: Well, that's she's suggesting Public Works is another one. I mean there are some other locations.

LEE: I know there was just a notice that was sent around today about Health Department, did CVTV have access to them?

WISER: I don't think they're set up there yet.

WRISTON: What about the adjoining area where we do our work sessions?

WISER: The training room?

WRISTON: The training room.

WISER: Their TV camera won't set up. And they have the microphones in there, but they're not set up per se for TV cameras.

WRISTON: They could probably do it. It would be easier than that. I mean you could have --

LEE: If there's space concerns I would suggest that -- and they're going to have to set up separately I would suggest that the motor vehicle licensing would give us more room.

WRISTON: So what do you need from --

WISER: What date are you talking for the training room?

WRISTON: Well, I don't know. I mean we haven't talked about dates. I mean I don't know what your time constraints are, I know you have some.

LEE: I mean ideally the ordinance would be adopted by the end of March by the Board and I think that's highly unlikely, but I think it's pretty important at least in terms of continuing our eligibility for Public Works trust funds to probably have the Board act on it by mid-April so we are on a close time frame here.

WRISTON: And our next hearing is when?

WISER: March 16th.

WRISTON: March 16th.

WISER: We can get the Board training room on March 2nd, also March 9th.

WRISTON: Do either of those dates work for --

DELEISSEGUES: Not the 9th.

WISER: And that's if you don't want it televised. Would that just be for the continuation of this hearing?

WRISTON: The deliberation, yes.

WISER: Deliberation --

WRISTON: Yes.

WISER: -- of this hearing only?

LEE: The other -- I think we did have another item on the agenda tonight too that --

WRISTON: The biannual Code?

LEE: Yeah.

WRISTON: I'd prefer at this point not to -- no, I mean I'd also just prefer I think there's going to be a fair amount of deliberation on this, I don't know, but I would imagine I'd prefer not to pile those two on.

DELEISSEGUES: Some of them they're deliberation on the Code amendments.

WRISTON: Right. No, I agree. I think I agree.

DELEISSEGUES: So you'd have to have a public hearing again.

WRISTON: Yeah, I agree on that and that would be a public hearing. So, no, I think it's best if, you know, if we can settle on a date, maybe March 2nd sounds like in the training room to finish this up if that works for everyone.

WISER: I can book March 2nd.

WRISTON: And I know it won't be televised but they could probably tape it, may be not.

WISER: We don't even have a tape recorder in there.

WRISTON: I mean it sounds like March 2nd works. Do we need to settle on a place tonight? I didn't think we do.

POTTER: Well, if you're going to continue it you have to continue it to a time and place.

WRISTON: And date and time certain, I know. That makes it tough when --

RUPLEY: Motor vehicle. See who's there.

WRISTON: Either the training room or motor vehicle I mean right --

WISER: It doesn't matter if it's training room or motor vehicle, we won't have the CVTV support because they're here and City Hall. And we won't have the tape recorder set up, they'll have the mics only. Plus we have you, so it would not be televised whichever location we're at.

WRISTON: Well, let's go with the training room then on March 2nd.

WISER: Unless we go on a Wednesday. If we go Wednesday, March 1st we could get the hearing room.

DELEISSEGUES: I can't go the 1st.

WRISTON: You can't go the 1st? And you can't go the 1st.

DELEISSEGUES: The 2nd is okay.

WISER: How about March 8th, we could get the hearing room?

WRISTON: March 8th.

WISER: Is a Wednesday and we could get the hearing room.

WRISTON: Does that work?

DELEISSEGUES: Not for me.

WRISTON: Are you gone that --

DELEISSEGUES: The 2nd is a good date, but I don't have to be here, you know, but they'll still have a quorum.

WRISTON: Is there any reason why it needs to be televised? I think we'd go for March 2nd, if everyone here who sat through this as a Planning Commission member can be there on March 2nd, then provided you can figure out the tapes and we'll have one or two of these.

RUPLEY: Go to Costco and buy a new tape machine, Sonja.

HOLLEY: Well, we need microphones and I need to be able to hear you guys and only one at a time. I mean that's going to be our problem.

LEE: We have set up microphones in there before, it can be done.

WRISTON: We'll help control that.

MOSS: I'm a little concerned too, you know, we had a lot of people attending tonight, there's a lot of interest in this subject, and we know surprisingly enough that there are a lot of people who watch these things who don't come down here and I'm wondering if we choose to use the training room and don't televise it, we may find that the room's too small.

WRISTON: Well, I mean the room, the training room actually holds a fair amount of people. I mean the option then is to go even further out, which, you know, I'm willing to do if you guys want to go further out, and it sounds like we'd be out into I heard the 23rd or the 30th of March.

EULER: If we need to move what we have scheduled for the 16th and move biannuals --

MOSS: Let's go to the 16th.

EULER: -- off of the 16th, but we've got to schedule another date in March because we've got (inaudible) which you got to get done, we've got more Gorge stuff that's

holding (inaudible) that's holding up the Gorge ordinance, so you got to have two in March if we're going to (inaudible).

WRISTON: No, I think that's we're talking, I think we're talking -- I mean we'd have to go the 16th and the 23rd.

WISER: We could do the 23rd at City Hall.

VARTANIAN: Do we have a feel for how much longer we might need for this particular portion?

DELEISSEGUES: Hours.

WRISTON: That's really hard to --

VARTANIAN: Yeah, I know, it's just -- you think so?

MOSS: It's going to take some time.

VARTANIAN: Yeah, but I mean if it's only an hour. And I may be, you know, like I said off on the broccoli, if it's only an hour or so we could come in an hour earlier. Okay. Even if I don't talk.

WRISTON: No, and I appreciate that, and we've tried it, we've tried that before where we've come in earlier I mean, and then also what happens when you pile you get tired as you've probably figured out tonight, you get tired by -- let's go for the 23rd then on this.

WISER: For the wetlands protection?

WRISTON: Right.

DELESSEGUES: What day of the week is it?

WRISTON: I don't know what day of the week it is, I don't have my calendar.

WISER: The 23rd is a Thursday.

LEE: The 23rd on wetlands or the 23rd moving the 16th agenda to the 23rd?

WRISTON: Let's just do the 23rd on the wetlands, I think that would be simpler, wouldn't it?

EULER: It's just a matter of timing so.

WRISTON: Would you rather -- I mean it's up to you, I don't think we really care.

MOSS: Well, you know, it might be easier to have our next meeting a continuation of this one rather than sticking something in between.

WRISTON: That's fine. If it doesn't mess you guys up, I just don't want to --

EULER: (Inaudible) how we notice.

MOSS: Yeah, at my age it's hard to remember that long anyway.

WRISTON: So the 16th for the wetlands and we'll move the rest from --

EULER: The other three things.

WRISTON: Yeah -- to the 23rd. And then the only other thing we've got to figure out is biannual and it doesn't sound we can attach that to either one.

EULER: Then put the other three things on the 23rd, the biannuals, BP to ML and the Gorge.

WRISTON: Boy.

LEE: Just I'll give you my gut feel, I really don't think the biannual should take a lot of time, there's only been about two people that have contacted me and has been following those.

WRISTON: I've heard from these three Planning Commissioners that there's questions and concerns on it, BP/ML, I just, you know, that of course we had mixed use in that too, but that one work session went on quite a long time.

EULER: The Gorge ordinance and issues won't take a long time.

WRISTON: Well, we'll give it a shot. We'll give it a shot and see what -- it is just BP/ML, right, it's not mixed use on top of that?

WISER: No.

WRISTON: Okay. We'll give --

DELEISSEGUES: What day of the week is the 23rd?

RUPLEY: It's Thursday. So there's nothing on the 2nd, the 16th and 23rd for March; right?

MOSS: Right.

WISER: Yes, 16th and 23rd.

RUPLEY: At what time?

WRISTON: The same, 6:30.

RUPLEY: 6:30.

WISER: Let's see if we have the 16th --

RUPLEY: I thought we had a work session.

WISER: -- let's see if we have a work session that night, it's nice having my computer in front of me. March 16th all we have is a 6:30 hearing, we do not have a work session that evening.

WRISTON: Okay, that works.

RUPLEY: We could get a lot done if we started early, if we started at 5:30.

MOSS: If I could by way of a heads up, I noticed something tonight that I had not noticed until I got here and that's the section on stormwater facilities and I'm really concerned about the significant change that's been made there, I'm going to want to talk about that unless I'm reading this wrong. You know, heretofore we've allowed stormwater facilities within Category IV wetlands, we're not even allowing them in wetlands at all now and only in the outer portions of the lower quality buffer. And I don't know what that means and I'm particularly concerned because, you know, I think one of the values that we keep espousing, you know, the values of wetlands is our flood storage capacity and if we're going to rule out stormwater detention facilities particularly in these lower category wetlands, I got to wonder whether we're serious about that as a value. And I'm thinking we've had past projects where I don't know how we would have built those projects without being able to put the stormwater facilities in the wetlands. And what I'm looking at particularly is this Section 4 on Page 15.

LEE: 15 talks about buffers. I think if you're talking about wetlands --

MOSS: Is there a specific section that talks about wetlands?

LEE: (Inaudible) Page 22. 22, Line 33.

MOSS: Okay. Good, maybe I missed that here. Oh, good. Okay. I'm glad to see that. All right.

LEE: I mean it does restrict it to those with habitat scores less than 20 which would typically be your Category IV, but, yeah.

DAVIS: It could also be Category II and III wetlands.

MOSS: Possible. Yeah. Okay.

WRISTON: So we're looking at the 16th and the 23rd. The only thing I'd throw out that Jada just said, and I think George also mentioned it too, there is a possibility since we don't have a work session of starting a little earlier if we want to try to tackle this, I mean, you know, this and biannual Code, do deliberations and then try to tackle --

WISER: On the 16th?

WRISTON: Yeah, on the 16th.

WISER: You'd have to re-advertise that then.

LEE: No.

WRISTON: No, you wouldn't.

LEE: It was Item B on tonight's agenda so you'd be continuing the agenda. Did you continue it to a different, I must have been out of the room at the time.

EULER: Continue it to March 16th and that will automatically carry biannuals over because it's already been advertised.

RUPLEY: So we could start at 5:30 though?

LEE: If that's the time to which you continue it, yes.

EULER: It's your choice.

WRISTON: I mean I'll throw it out to you guys because we -- I mean we're kind of --

MOSS: I think it's worth a shot, we may be able to wrap this up. And I know --

WRISTON: We're damned if we do, damned if we don't, then we're going to be -- we're backing these other agendas up so let's -- if that works for everyone let's try to start at 5:30 on the 16th and we'll try to do both and then keep -- because I am concerned about BP and ML and I know the Gorge will be fairly quick but I don't know about BP/ML, it might be, and then we get out early so.

LEE: A point of order, Mr. Chair. Did you officially close the public testimony on the wetlands and you are now in deliberations?

WRISTON: Absolutely, twice. No, I mean I did when we got back from the break I reminded everyone that it was --

LEE: I just want to be sure.

OLD BUSINESS

None.

NEW BUSINESS

WRISTON: On new business the Commissioners want us to consider, and I'll throw that out, and George was sitting there and Dick was sitting there, with the growth management expansion and hearings coming up just want us to give some thought to how we would want to see that go down in terms of do we want joint hearings, do we think those are valuable. We did do them the last time, do it to a certain extent. So we don't need to answer that tonight, but that is something that I'd just throw out there for you guys to kind of chew on and we can talk about it at the next work session or something, so but they did want us to talk about it. All right.

COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

None.

ADJOURNMENT

The hearing adjourned at 11:30 p.m. All proceedings of tonight's hearing are filed in Clark County Community Development/Long Range Planning. The minutes can also be viewed on the Clark County Web Page at
www.co.clark.wa.us/ComDev/LongRange/LRP_PCagenda.asp

Jeff Wriston, Vice Chair
Minutes Transcribed by:
Cindy Holley, Court Reporter
Sonja Wiser, Administrative Assistant

Date